

Fort Leavenworth Ethics Symposium

The Professional Ethic and the State

Symposium Report

Fort Leavenworth, Kansas
20-23 April 2015

Edited by
Kristy G. Russell and Ted G. Ihrke



Co-sponsored by

The US Army Command and General Staff College
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Editor
Jennifer B. Fike

Foreword

Ethics is an integral aspect of everything we espouse as professionals. Ethics underpins leader development, moral decision making, and the trust relationships inherent within our organizations. Since 2009, the Command and General Staff College has partnered with the Command and General Staff College Foundation, Inc. to host an annual ethics symposium. These symposia provide an opportunity for a broad audience to think about and discuss topics that are important to our profession.

Titled *The Professional Ethic and the State*, the 2015 symposium explored the responsibilities and obligations between the United States and its military. We have entered a new era, following more than a decade of war that poses difficult challenges for our civilian and senior leadership. At the heart of these challenges lie the Army's emerging doctrine that describes the military profession, its ethic, and the contract between the Soldier and the state.

This compendium of articles document much of the independent thought that encouraged discussion during the symposium. These papers cover a wide array of related topics regarding Soldiers and politics, trust between society and the military, caring for service members and veterans, moral injury, and the professional obligations of the military. Although chosen for this year's symposium, these subjects are enduring and represent long-standing topics that will shape how we view the relationship between society and the military for years to come.

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Chapter 1

Breach of Trust: A Contributing Factor to Traumatic Stress Injuries in Soldiers

Chaplain (CDR) David L. Bachelor, USN
and
Chaplain (CPT) Jong Ho Chin, USA

Introduction

Army Doctrine Publication 1 (ADP 1) asserts that the Army is a profession “built upon an ethos of trust.”¹ “Trust” is defined as “assured reliance on the character, ability, strength, or truth of someone or something.”² Although “trust” is central to the Army’s foundation, the same publication reminds its readers there must be “common values” already present in order to establish trust.³ Our Founding Fathers named important common values in the Declaration of Independence:

[A]ll men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it.

Our founders claimed the right to alter power structures that threatened the people’s liberty, however the *Manual for Courts Martial United States* eliminates this choice for an individual in the military.⁴ When a Soldier takes the service oath, he or she voluntarily surrenders certain basic freedoms and becomes subject to military discipline.⁵ This abjuration of the American birthright by the individual implies great trust in the leaders of our military. There are grave personal consequences if this trust is breached.

The US Navy and Marine Corps publication on Combat and Operational Stress Control lists “inner conflict” as one of four mechanisms capable of producing stress injuries.⁶ These stress injuries arise out of moral violations either witnessed or committed. In a 2008 survey of Soldiers deployed to Iraq, there was a direct correlation between unethical behavior and traumatic stress injuries.⁷ Despite this documented proof that integrity violations increase traumatic stress, the last comprehensive mental health assessment of personnel deployed to Afghanistan did not probe into this realm. Instead the survey focused on combat exposure, personal relationship issues, number and length of deployments, and the concerns war-fighters had about their quality of life.⁸ The seven surveys conducted by mental health assessment teams (MHAT) during the Long War were constrained by their mission objectives, resources, and targeted population, but at least these surveys explored what pathogens might cause stress trauma wounds in particular demographical groups within the US military. It has now been five years since the last MHAT, longer than any previous survey hiatus, and the reduced operational tempo seems to indicate a cessation to the MHAT process. Without a major ground war, military leaders are returning to the *status quo ante*, which is to look for traumatic stress only in operational environments.

Moral Injury

Clinical professionals recognize the inherently moral environment of military culture.⁹ Many therapists believe that if a service member violates his or her own moral code during war, regardless of lawful authority, it is the starting point for post-traumatic stress disorder (PTSD).¹⁰ In this context PTSD develops when a person's biology and his or her understanding of the world render him or her unable to process an event.¹¹ When this incompatibility occurs the wound is called "moral injury" and is defined as "the lasting psychological, biological, spiritual, behavioral, and social impact of perpetrating, failing to prevent, or bearing witness to acts that transgress deeply held moral beliefs and expectations."¹² In popular culture, "moral injury" and PTSD are nearly synonymous. Dr. Rita Nakashima Brock, research professor and co-director of the Soul Repair Center at Brite Divinity School, states unequivocally, "Moral injury is not PTSD. Many books on veteran healing confuse and conflate them into one thing."¹³ The most recent Diagnostic and Statistical Manual of Mental Disorders (DSM-5) does not contain any room for ethical dilemmas within its diagnostic framework for PTSD.¹⁴ Certain subjective responses were eliminated in the new diagnostic criteria because some clinicians felt that previous DSM's defined trauma too broadly, which in turn, allowed "over diagnosis of PTSD resulting from less threatening events."¹⁵ One of those less threatening events is moral injury. There are veterans previously diagnosed with PTSD according to earlier DSM's who now may have to be re-classified under DSM-5 because their trauma was not caused by direct mortal or bodily threat.¹⁶

The Threshold for Moral Injury

Even though moral injury is not PTSD, it is a stress injury capable of disabling a service member.¹⁷ Situations believed to cause "moral injury" are: Killing and failing to prevent the death of others;¹⁸ abusing non-combatants; wanton destruction of private property; and violations of the Rules of Engagement.¹⁹ The present study asserts that participation in the previously listed events may transgress a warrior's deeply held beliefs, but the horizon for moral injury should not start at these extreme experiences. The genesis point is much more mundane. In fact, the boundaries for moral injury begin with the most fundamental shared value in Western culture – the Golden Rule which says, "Do unto others as you would have them do unto you." Nearly every one of the world's organized religions has a similar teaching.²⁰ In the early years of the Long War, an Army Field Manual on leadership stated a military version of the golden rule and connected this mindset with American citizenship: "Respect for the individual is the basis for the rule of law – the very essence of what the Nation stands for. In the Army, respect means treating others as they should be treated."²¹ Indeed, the US Constitution states that its purpose is to "establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." A leader sworn to support and defend this document commits a breach of trust if he or she abuses someone under his or her authority.

The definition of breach of trust used in this study is: A voluntary act committed by a person holding a position of authority that violates established norms and puts at risk the

well-being of the unit, individual members, or both. The emphasis in this definition is on volition and includes an event horizon ranging from a single act to a command climate of moral decay. The military already recognizes some of the pathological properties of unethical leadership behavior. The United States Marine Corps addresses unethical leadership in Marine Corps Warfighting Publication (MCWP) 6-11 *Leading Marines*. Officers and non-commissioned officers are reminded that even minor breaches call into question other peoples' presumption of a leader's "integrity, good manners, sound judgment, and discretion."²² Army Doctrine Publication 6-22 *Army Leadership* (ADP 6-22) uses the term "negative leadership" for behavior that is a breach of trust. ADP 6-22 asserts that the worst form of negative leadership is "toxic leadership."²³ Such a leader "lacks concern for others and . . . operates with an inflated sense of self-worth and from acute self-interest. Toxic leaders consistently use dysfunctional behaviors to deceive, intimidate, coerce, or unfairly punish others to get what they want for themselves."²⁴

Non-combat Stress Trauma

In *Achilles in Vietnam*, former Veteran's Administration (VA) psychiatrist Dr. Jonathan Shay noted similarities in the behavior of Vietnam veterans injured by stress trauma and Achilles, the central figure of Homer's *Iliad*.²⁵ According to Dr. Shay it was the breach of trust between a senior leader and Achilles that made Achilles vulnerable to psychological injury.²⁶ Shay labels this unethical behavior "betrayal of what's right."²⁷ This phrase can now be found in the Marine Corps Reference Publication *Combat and Operational Stress Control*.²⁸ Shay asserts that when military leaders willfully take advantage of their position "the [human] body codes it in much the same way it codes physical attack."²⁹ Perhaps echoing Dr. Shay, MCRP 6-11C instructs leaders that "the distress and changes in functioning that can result from an inner conflict stress injury can be just as profound and long-lasting as those resulting from a life-threat or loss."³⁰ If "breach of trust" is inserted in place of "inner conflict" it is possible to extrapolate that an unethical leader has the same psychological wounding capacity as a roadside bomb or a sniper attack.³¹

In the previous paragraph, stress injuries were likened to the wounds of kinetic warfare; however, trauma to the soul does not require a battlefield. Psychiatrist Michael Linden believes that "humiliation and severe injustice can rightfully also be called a severe event."³² Dr. Linden suggests Post-Traumatic Embitterment Disorder (PTED) as an alternative diagnosis for the injury caused by the betrayal of social expectations. Linden notes that a person embittered by unethical treatment displays symptoms of "helplessness and hopelessness, aggression against oneself and others, reduction in drive, multiple somatoform symptoms, phobic avoidance of selected places and persons, or by retraction from social activities."³³ These reactions are similar to the operational injuries described in FM 6-22.5 *Combat and Operational Stress Control Manual for Leaders and Soldiers*.³⁴ Army leaders are warned that stress trauma may be triggered by "an event that is perceived and experienced as a threat to the stability of one's world."³⁵ Supporting this finding and using nearly identical "world" language Dr. Nakashima Brock writes in *Soul Repair: Recovering from Moral Injury After War*, that "moral injury results when soldiers no longer believe in

a reliable, meaningful world.”³⁶ One factor in the destruction of these “worlds,” according to Brock, is a leader’s breach of trust.³⁷

A soldier’s “world” consists of more than just the operational environment. His/her world also contains an administrative and training cycle that has many similarities to the civilian business “world.” In the business world the most common source of traumatic stress injuries is “mobbing” and “bullying.” The term “mobbing” is a recent addition to the English language and includes “socially isolating the victim,” “harassment” and “psychological terror.”³⁸ Often a pre-requisite for mobbing is a perceived difference in social control and/or authority.³⁹ In 1992 Swedish researcher Heinz Leymann asserted that a connection existed between “mobbing” and stress trauma.⁴⁰ In a later study Leymann partnered with Annelie Gustafsson and these researchers concluded that “mobbing” produces the same level of stress trauma as “war or prison camp experiences.”⁴¹ Leymann and Gustafsson compared their patients’ mobbing reactions to the reactions of train-drivers who had watched helplessly as a person committed suicide using the driver’s train.⁴² The driver’s “helplessness” is significant because this mental state meets a diagnostic criterion for PTSD under the former DSM (DSM-IV) and also embodies one of the examples for classic moral injury: failing to prevent the death of others.⁴³ Despite this affinity, the statistical data examined by Leymann and Gustafsson pointed to a lower level of stress trauma in the train drivers than in mobbing victims. Leymann and Gustafsson concluded that the higher rate of stress trauma in the mobbing victims was due to “a series of further traumatizing rights violations and identity insults from different societal sources.”⁴⁴ The mobbing victims’ “rights violations and identity insults” were perpetrated by administrators and other officials who failed to perform the duties of their office.⁴⁵

Among professionals who study workplace stress injuries, “bullying” and “mobbing” are nearly synonymous.⁴⁶ The definition of “bullying” in this paper is: a systematic abuse of power with the main definitional characteristics of persistent and repeated negative actions which the target perceives and interprets as intended to intimidate or hurt.⁴⁷ This particular definition is cited to suggest a congruency to the US Army term “toxic leadership” used for supervisors who intimidate and unfairly punish members of their command.⁴⁸ In a 2012 survey of 516 victims of workplace bullying, thirty percent of the respondents had been diagnosed with PTSD.⁴⁹ This rate of stress trauma is ten percentage points higher than the rate of PTSD found in maneuver units of the US military in Afghanistan by the Joint Mental Health Advisory Team 7.⁵⁰ In 2015 one review of clinical studies on bullying and PTSD formulated an even higher rate of stress injury (57 percent) as a result of bullying.⁵¹ These findings suggest that if there is congruency between “bullying” in the workplace and “toxic leadership” in the military then units commanded by unethical leaders will have a high rate of stress injury regardless of the operation being supported.

Conclusion

Since the start of the Long War, all branches of the US military have experienced stress casualties in their ranks. Some of these casualties fit the clinical criteria for PTSD but many do not. There is a type of stress casualty called “moral injury.” The criterion for this injury is that a service member has been an observer of, or participant in, an act that violated core

beliefs. Typical examples of conscience-transgressing behavior are drawn from the kinetic portion of war-fighting such as killing and dealing with casualties.

There are two flaws with this line of thinking. The first mistake is setting the bar for core beliefs at such an extreme range of human behavior. Core beliefs are much more mundane. For example a central belief of American service members is that leaders can be trusted to act in an ethical manner. All branches of the military recognize integrity and ethical behavior as cornerstone issues for leaders. Clinical studies have confirmed that unethical leaders have a significant impact on how their troops process the stressful environment of war. So it is troubling that the latest, and perhaps last, of the Mental Health Advisory Team surveys of deployed personnel only asked respondents to rate their leaders on logistics, communication and professional competence rather than ethical behavior.

The second flaw in limiting the nativity of moral injury to combat-related events is that clinical evidence clearly contradicts this assumption. Unfortunately this evidence comes from civilian office culture rather than the Mental Health Advisory Teams deployed to Afghanistan and Iraq. Despite the civilian pedigree of such data the verdict is undeniable: Leaders who violate the trust of their office produce stress casualties.

The number of American troops engaged in combat is declining precipitously. According to the current parameters for moral injury, this reduction in exposure to the products of violence should correspond to a decrease in the number of service members experiencing stress injuries from inner conflict. However, if there is any correlation between the experience of workers in an office environment and soldiers performing their routine duties in garrison, there will still be the risk of moral injury stress trauma wherever leaders commit a breach of trust against their subordinates. The purpose of this paper is to make military leaders aware of this impending crisis because currently no one is looking for moral injuries in non-deployed personnel.

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Chapter 2

The Profession of Arms and the Moral State We are In: The Shared Mission of Ordered Liberty

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Introduction

We gather this week around the topic “The Professional Ethic and the State.” We have a rich slate of presentations and papers planned that explore different dimensions of a dynamic that goes by a variety of names: the Soldier and the state, civil-military relations, the civilian-military gap, and so forth.

Many of us remember well when Thomas Ricks and others proclaimed the dangers of a looming crisis in civil-military relations and a growing gap between Soldiers and society. That prompted a host of publications and conferences that have fueled a conversation that continues unabated almost 20 years later. Indeed, the conversation today may be more intense than ever in the aftermath of over a decade at war, as we ponder how society should care for returning Soldiers, especially the tens of thousands in need of acute care. Several papers this week address this aspect of the issue.

Perhaps fewer of us will recognize that this twenty-year conversation actually stretches back several centuries, and that the issue of the relation between the Profession of Arms and the State is as old as the country and perhaps as old as the profession of arms.

It is generally acknowledged that the modern conversation traces its roots to the publication of Samuel Huntington’s *The Soldier and the State* (1957) and Morris Janowitz’s, *The Professional Soldier* (1960). Indeed, it would seem that these two works pretty much set the parameters for the contemporary conversation.

In what follows, I am going to do two things. First, as a way of setting the stage for the work we do this week, I will offer a brief summary of the two perspectives represented by Huntington and Janowitz, paying particular attention to how they frame or set the parameters for the conversation about the moral intersection of the profession of arms and civilian society. Second, I will suggest a way forward beyond the polarities they represent.

What I am going to suggest is we ought to move beyond the traditional framework that simply sets the functional imperatives of Soldiering against the social, moral imperatives of civilian society and vice versa, that sees the civil-military relation as a clash of cultures. Instead, we need to think about the shared, if differentiated, task of making/nurturing a common moral culture.

This entails reflecting on the moral character of both the profession of arms and the American experiment, as well as considering the relation between the two.

The Problem Defined

Traditionally, the moral issue between the Soldier and the state has been cast in terms of how a democracy maintains a military that protects and sustains democratic values. On one hand, it is feared that a democracy will not nurture and support the military; on the other hand, it is feared that the military will disregard democratic values and shed its loyalty to civilian leaders.¹

This tension is sometimes described using the language of professions and organizational theory: An institution's legitimacy in the eyes of the public depends in part upon its moral integration with society. Legitimacy also depends upon the organization being viewed as effective at what it is supposed to do.² Thus we have a tension between two opposed demands; the functional imperatives of proficiency in fighting wars and the social imperatives of moral alignment with society.

Of course, no one thinks that all the differences between civilian and military orders can or ought to be dissolved. In a society based on personal autonomy, civil liberties, and democratic governance, a military that hopes to be effective must subordinate the individual to the group, personal well-being to the mission, and the chain of command cannot be democratic.

Such is the general shape of the problem. As already suggested, Huntington and Janowitz provide the framework for thinking about how to resolve or manage this tension.

Samuel Huntington: Separation

In his classic work, *The Soldier and the State*, Huntington emphasizes the difference and distance between the military culture and civilian society. There are five aspects of his work worth mentioning.

1. Liberalism v Conservative Realism

As Huntington tells the story, the tension between society and the military is rooted in the conflict in North American political history between liberalism and conservative realism. Liberalism, the dominant social ideology in our country, is characterized by an individualism that rejects any restraints upon liberty, is optimistic about human ability to improve, and fears the power of the state.

Conservative realism, which corresponds with the military ethos, is marked by a stronger sense of community (it is anti-individualistic), and while it is wary of the dangers of the concentration of power, nevertheless, it recognizes the importance of the well-armed state for security in the face of a humanity that is not disposed to treat one another particularly well (it has a pessimistic view of human nature).

2. Functional Imperatives Trump Social Imperatives

Whereas the political problem of liberalism is internal, that is, liberalism is concerned with the individual threatened by an overbearing state wielding too much power, conservative realism looks outward; it sees the primary threat as external, coming from other states.

Accordingly, the military must focus on the functional imperatives of national security. Speaking at the outset of the Cold War, Huntington writes:

The functional imperative can no longer be ignored. Previously the primary question was: what pattern of civil-military relations is most compatible with American liberal democratic values? Now this has been supplanted by the more important issue: what pattern of civil military relations will best maintain the security of the American nation?³

Huntington is clear. In the face of external threats, the question is, what civil-military relation best serves the functional imperative of security?

3. Manage by Maintaining Separation

Huntington answers his own question by arguing in effect for a kind of isolation of the military from civilian society. He recognizes that the values of the military are necessarily different from those of civilian society and that civilian society needs to recognize and respect that difference. To this end, he emphasizes the autonomy of the professional military and resists trends to civilianize the military, which would undoubtedly undermine military effectiveness in confronting external threats.

4. Objective Civilian Control

This military autonomy, however, is not synonymous with independence. Rather, Huntington espoused a theory of what he called “objective civilian control,” in contrast with subjective civilian control, which would have civilians micro-managing the military in accord with civilian social moral imperatives, hemming Soldiers in with ever-increasing legal and institutional restraints.

Objective civilian control focused on maximizing military professionalism, understood in a particular way. First, it involved civilians recognizing and respecting that Soldiers are experts in the management and application of violence. Second, it involved Soldiers recognizing and respecting the political authority of civilian leadership.

What this amounts to is a moral vision that clearly delineates military means and social-political ends. As Huntington says, “the statesman furnishes the dynamic, purposive element in state policy. The military man represents the passive, instrumental means.”⁴

In other words, there is a bright line between politics and the military. “Politics is beyond the scope of military competence,” Huntington says, “and the participation of military officers in politics undermines their professionalism. . . The military officer must remain neutral politically.”⁵ The military mind is unconcerned with the desirability or undesirability of any given political end; the only concern of the military is the means.

In other words, a properly professional military is neither politicized nor civilianized. Rather, it is a neutral tool or instrument of the state. As such, the military is granted autonomy in its realm of expertise in exchange for loyalty to the civilian leadership and the ends that leadership selects.

5. The Professional Ethic: Obedience

Unsurprisingly, central to the professional ethic that Huntington develops to accompany this vision is obedience. About this ethic and the Soldier, Huntington writes, “His goal is to perfect an instrument of obedience; the uses to which that instrument is put are beyond his responsibility. His highest virtue is instrumental not ultimate.”⁶

To be fair, Huntington does raise the issue of the limits of obedience. We will focus on what he calls the conflict between the military value of obedience and nonmilitary values. He identifies four points of conflict.

First, there is the conflict between military obedience and political wisdom; for example, when an officer is ordered by a politician to follow a course of action that the officer knows will lead to national disaster. Huntington concludes that the officer, whose expertise is solely military, must defer to the politician.

Second, there is the conflict occasioned by politicians commanding something that is militarily absurd or intervening in military operations; for example, to decide whether battalions should advance or retreat. Here Huntington is clear, the politicians have exceeded their professional jurisdiction and so military disobedience is justified.

The third conflict involves legality; for instance, a civilian gives an order that exceeds his or her authority. Huntington says that if the civilian knows it is an illegal order, the Soldier is justified in disobeying. If, on the other hand, the civilian is acting in good faith, then the Soldier should consult the JAGs. If that option is not available, the Soldier is left to consult the appropriate law and make their own decision.

Finally, there is the conflict between military obedience and basic morality. What does an officer do, Huntington asks, if ordered by the politician to commit genocide or exterminate the people of an occupied territory?⁷

He answers that it is not as obvious as one might think because political ends may be bound up in the order, that the politician may be under compulsion to violate common morality for the good of the state. Thus he concludes, “As a Soldier, he owes obedience; as a man, he owes disobedience. Except in the most extreme instances, it is reasonable to expect that he will adhere to the professional ethic and obey.”⁸

Conclusion

Before moving forward, it is worth taking a moment to make a few observations. We can set aside the fact that apparently genocide does not clearly and self-evidently rise to the level of an “extreme instance” where disobedience is justified. Instead we can focus on the moral implications of Huntington’s conception of what it means to be a profession. It is a conception that minimizes, almost to the point of extinction, the moral dimension of a profession. He conceives of a profession in baldly instrumental terms – expertise that can be applied to any ends provided by the state. According to this vision, the only grounds for a warrior to object to an order is technical efficiency, that is, when politicians intrude upon the realm of military expertise. When one ventures to make a forthrightly moral

evaluation, one suddenly finds oneself alone – a solitary individual appealing to private conscience against the weight of both an instrumentalist military and the state.

Huntington fails to recognize that professional Soldiers are not just experts in the management and application of military force. They are not simply warriors; they are (to deliberately echo Martin Cook) *moral* warriors. As James Burk notes, Soldiers act under civilian authority but they exercise moral discretion in what they do and how they do it.⁹ Thus they are moral agents who bear responsibility for their actions. Burk calls this “responsible obedience,” in contrast with “blind obedience.” Specifically, Soldiers are responsible for exercising discretion in accord with the moral values and customs associated with the constitutional design of the nation and the laws of war that are part of that design.

Said another way, Huntington’s model for managing the civil-military difference isolates the military too much from the social, moral imperatives that underwrite the nation.

Morris Janowitz: Civilianization

In *The Professional Soldier* (1960) Morris Janowitz counters Huntington’s “isolation” thesis with a more civilianizing vision of the military that focuses on how the military is *already* integrated to society. Janowitz identifies four trends in military culture that point toward a narrowing of the gap as the military adapts cultural values from the civilian world.¹⁰

*1. Changing Organizational Authority*¹¹

Janowitz notes that by the late 1950s there had been a change in the basis of authority and discipline within the military that he characterizes as a shift away from authoritarian domination toward more managerial styles of leadership, involving persuasion, explanation, and team building.

*2. Narrowing Skill Differential Between Military and Civilian Elites*¹²

The necessity that commanders perform managerial and administrative tasks means that officers develop skills and orientations common to civilian administrators and leaders. Moreover, the ever-increasing technological character of modern warfare means that a significant majority of Soldiers perform technical tasks that have direct civilian equivalents. Indeed, the concentration of personnel with “purely” military occupational specialties is very small and declining.

*3. Shift in Officer Recruitment Patterns*¹³

Since the beginning of the 20th century there has been a marked shift in the recruiting base of officers. Recruiting has shifted from a narrow, relatively high social status base to a broader base that is more representative of the population as a whole.

*4. Trends in Politicization*¹⁴

As the military has grown into a vast managerial enterprise, commanders have been compelled to develop a more political orientation in order to adequately interact with civilian leadership and the public.¹⁵ On one hand, military leadership has had to develop a political ethos in order to engage with the legislative and administrative processes regarding

national security policies and affairs. On the other hand, military leadership has been forced to attend to the political repercussions of military actions on the international balance of power and behavior of foreign states. As Janowitz puts it,

The growth of the destructive power of warfare increases, rather than decreases, the political involvement and responsibilities of the military. The solution to international relations becomes less and less attainable by use of force, and each strategic and tactical decision is not merely a matter of military administration, but an index of political intentions and goals.¹⁶

Constabulary Force¹⁷

These trends prompt Janowitz to articulate a vision of civil-military relations around the notion of a “constabulary force.” A military so configured functions more like a police force, that is, a force that is more measured in its use of violence, more cognizant of the political factors that constrain military action, more tolerant of ambiguity and less than clear-cut victory, and more closely integrated with civilian values.

Absolutist v. Pragmatic Visions of the Military¹⁸

Janowitz recognizes that this constabulary vision runs against the grain of what he calls an absolutist vision of how the military should be used. The absolutist vision, which he correlates with conservative realism, sees warfare as the fundamental basis of international relations and as essentially punitive in character. It believes that since the political objectives of war are gained by victory, the more complete the military victory, the greater the opportunity for achieving those political goals.

The pragmatic vision, on the other hand, sees war not as fundamentally as punitive but as political, that is, military force is just one of several tools in the political tool box, and it can be used in tandem with other tools for the sake of attaining limited political ends well short of total military subjugation.¹⁹

Citizen-Soldier²⁰

The constabulary force Janowitz describes clearly corresponds to the pragmatic vision of the military. It is a military that is more fully integrated into the political and social ethos of the civilian world. According to Janowitz, central to this civil-military integration is the requirement of military service by all citizens. The citizen-Soldier is a center-piece of his vision. He notes that there are several ways this can be understood, from an all-volunteer force, to a system of universal public service, to a mixed system composed of both voluntary service and the draft.

While Janowitz is an advocate for the citizen-Soldier, he recognizes that the technological necessities of warfare require longer service and more highly trained personnel than the traditional model of citizen-Soldier can accommodate.

Conclusion

By way of conclusion, it is worth noting what Janowitz does not say. He does not address the military professional ethic and the potential for conflict with civil society because

on the basis of the trends he identifies, he assumes significant moral integration between the military and civilian world. Indeed, numerous times in the course of his study he declares that the moral and cultural gap is less than at any other time in modern history.²¹

Moreover, the tension he does identify is principally related to elements within the military profession that cling to an absolutist vision of the military and resist the political and technological realities that are moving the military toward a more civilianized, constabulary force.

Finally, while Janowitz embraces the citizen-Soldier, he provides no guidance on how that ideal might be revived in the face of counter-posing trends.

Beyond the Moral Culture War: The Shared Mission of Ordered Liberty

According to Huntington, the military is essentially an amoral tool that should not be saddled with social imperatives that govern the civilian world. According to Janowitz, the military needs to recognize and embrace the civilianizing process that is already underway. The debate is about two moral poles and which should give way and move toward the other. The model is that of a moral culture war.

In what follows I want to suggest that this polarized model misconstrues both the character of the military as a profession and the nature of the American experiment. Furthermore, a more fruitful and promising way forward is one that starts with a sense of both the military and civilian population being joined together in a common project of ordered liberty. Consequently, the differences between civilian and military are best understood not as the clash of opposed moral visions, but rather as a matter of professional differentiation within a shared moral vision.

1. Who Are We? The American Experiment in Ordered Liberty

As Huntington makes clear, the socio-political imagination of the United States is torn between two visions of who we are, although he mis-describes the two visions.²² On one hand, there is what I will call atomistic liberalism. Atomistic liberalism understands this country to be little more than a collection of possessive individuals who are devoted to nothing greater than the pursuit of their own private goods. And for the sake of our own private goods or interests, we band together in a kind of *modus vivendi*, or social contract. That is, we agree to rules that will manage or regulate the clash of all these individuals with their competing and conflicting interests so that we can avoid the Hobbesian condition where life is reduced to a war of all against all – solitary, poor, nasty, brutish and short.

This is what the political theorist Judith Shklar calls “the liberalism of fear.”²³ What unites us is not some shared good; a *summum bonum*, but a *summum malum*, a common fear of death. The overriding concern of atomistic liberalism is securing the political conditions for the exercise of individual freedom.

Thus, we embrace the classic definition of freedom offered by John Stuart Mill in his essay *On Liberty*: “The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.”²⁴ Freedom thus conceived is a matter of license, autonomy. It’s

a matter of rights with few, if any, responsibilities. (Non-interference is a passive restraint, not an active responsibility.) It is a matter of freedom from, not freedom for.²⁵

The other current within the American socio-political imagination is often identified as the “civic republican,” which is not to be confused with the modern political party of a similar name, and is considered by many to be a richer strand of liberalism.²⁶ This is a socio-political vision of freedom, not merely in the negative sense of individual rights as entitlements and non-interference, encompassing the positive dimension of freedom for, of rights that are bound up with responsibilities, of freedom linked to service and universal benevolence. Said a little differently, this is a vision of ordered liberty, of freedom ordered toward a shared good – shared in the sense that it is a collective task or project in which citizens participate for the good of the whole.

For many this is linked to the preamble of the Constitution, where the language is decidedly civic republican: We the people . . . to form a more perfect Union, justice, domestic tranquility, common defence, general welfare, secure blessings for ourselves and our posterity . . . This is not the language of possessive individualism and endless conflict over rights but of a people united in a common project of shared welfare and flourishing.

My argument is that it is more promising to approach the question of the professional military ethic and the state from the basis of the civic republican vision of America. If one starts from atomistic liberalism, then there should no surprise that moral conflict is endemic between the military and civilians, and there are no real grounds for hoping for anything other than conflict.

Indeed, I will go further and say that if the military is to endure and flourish as a profession, and not simply as a bureaucratic collection of experts who function as an amoral tool, distinguishable from mercenaries or contractors only on the basis of your pay scale, then we must be about the task of reclaiming and reasserting the civic republican vision.

Now I will freely admit that I am making an argument. Like I said, the political-philosophical roots of America are contested. Moreover, I concede that my argument is aspirational, perhaps even more aspirational than accomplished. I am arguing on the basis of the best that both the military and the civilian political order claim about themselves. I see no benefit arguing from the worst that we say and do; nor do I see any benefit gained from yielding to the temptation to compare the *best* that the military *says* about itself with the *worst* that civilian culture *does*.

Acknowledging that this is aspirational only sets the stage for the moral work, the moral task, the moral mission that is shared by both Soldier and civilian. And surely Soldiers, with their military realism about human nature, did not expect this to be easy. That is why I called this the American experiment. It is a task, a mission, a work-in-progress. More about this in a moment.

2. A Professional Military: Integration with Appropriate Professional Differentiation

Understanding that we –all of us, Soldier and civilian –are joined in the common project of ordered liberty sets the stage for approaching the matter of the professional military ethic and the state.

Against Huntington, the issue is *not* rightly framed as if it was a clash of divergent moral visions. Joining the profession of arms does not require renouncing the moral imperatives of civilian society. Insofar as both the military and civilian society are animated by/aspire to/claim the civic republican moral vision of ordered liberty set forth in this nation's founding documents, the civil-military relation is not properly conceived in terms of isolation or separation but of integration.

Indeed, we now know that Huntington was historically wrong in asserting the importance of the military's isolation from civilian mores. The military has never been isolated.²⁷ It is not isolated today. James Burk convincingly shows that the military's institutional presence –by which he means its material and moral integration with society –remains robust today. He writes (before 9/11),

While the end of the Cold War diminished the military's presence in society, the military has not by any means become isolated—and certainly not a peripheral or predatory—institution, estranged from American society. On the contrary, it remains highly salient, as a central institution affecting our material well-being and active in contemporary projects to constitute what we think is a good and secure society. Indeed, in some respects, it is more central today that it was at the dawn of the Cold War.²⁸

While we might deplore the apparent cultural ascendancy of possessive individualism, with the attendant problems of subjectivism and consumerism, Janowitz is right when he points out that the military has in countless ways (some perhaps for good and some for ill) embraced civilianizing trends. Moreover, it did so long before the 1960s or the rise of the Me generation and the requirements of maintaining an all-volunteer force necessitated civilianizing military life in order to keep volunteers content and enlisted.²⁹

My point is that the moral conflict that many in the military feel in the face of the apparent triumph of possessive individualism is not rightly construed as a conflict between military and civilian cultures. It is more complicated than that; the lines are not so clearly and neatly drawn. Rather, it is a conflict between atomistic liberalism and civic republicanism that runs through *both* the military and the civilian worlds.

The evidence for this is manifold and for those who are interested, I would encourage you to look into the research of the Triangle Institute for Security Studies.³⁰ That research reveals not one, but many gaps between Soldiers and civilians, between civilians, between enlisted and officers, between junior and senior officers. What these gaps reflect is the military's integration with civilian moral culture and the struggles between different moral visions there.

Beyond making the point that the military's integration with society means the moral challenge is not rightly parsed as "military v. civilian," I want to make a further, positive point about this integration. In the passage just cited, Burk makes mention of the military being "active in contemporary projects to constitute what we think is a good and secure society." [citation needed] The integration is not all negative; integration is not just about the military having to deal with the same moral acids that civilians have to deal with. Rather, there is an upside to this integration as well. The military has participated in and contributed to the project of building a good society.

As Burk shows, the military has been deeply involved in the American experiment, in the ongoing national work of articulating and embodying the vision of domestic tranquility, general welfare, and shared blessing that the preamble to the Constitution lifts up as our national mission.

For example, the military is frequently lauded for being a leader in overcoming racial division, an effort that it did not initiate and that it has not perfected but that it has owned and in which it has rightly taken some pride. And for all the work that remains to be done (indicating again the military's integration with civilian culture), even with regard to gender, there is evidence that the military is ahead of much of the civilian population regarding embracing the leadership of women.³¹

Moreover, military personnel have benefitted from social moral imperatives as they have gained citizenship rights through the extension of procedural and substantive rights in the UCMJ.³² Likewise, the shifting understanding and practice of authority away from domination by command has contributed to the dignity and empowerment of Soldiers through a better, and arguably more effective, understanding of leadership and followership.

These positive examples of integration of civilian moral imperatives (and no doubt there are many others) are meant to make the point that, in the words of Burk, "these dimensions of moral change – increasing citizens' rights, limiting race and gender discrimination, and expanding the benefits of a democratic peace, are not marginal developments but reflect core US values."³³ By participating in these efforts, in leading some of them, the military is not yielding to an alien will but rather is reflecting its ownership of and participation in the shared mission that is the American experiment. It is contributing positively to the normative project that this country professes constitutes a good and secure society.

3. Professional Differentiation: Emphasis, Form, and Accountability

If Huntington's "isolation" thesis errs in positing a moral separation between Soldier and civilian, Janowitz's "civilianizing" thesis errs in failing to adequately address the moral difference between Soldier and civilian.

Arguing as I have for the moral integration of Soldier and civilian in shared mission that is the American experiment in ordered liberty does not imply that there is no moral difference between Soldier and civilian. The integration is not total; Soldiers are not simply civilians with guns and a license to use them.

Soldiers are different and the moral expectations that attach to the profession of arms are different than those that attach to the generic civilian. As noted earlier, there are restraints placed on some rights of Soldiers and Soldiers are granted permission to do things that civilians are not permitted to do.

But this difference is not accurately described in terms of a conflict, a clash or culture war, as if what was in play are rival moral visions. Rather, the difference between the moral ethos of the generic civilian and the profession of arms is properly described as a matter of professional differentiation. I need not belabor this point as it has been thoroughly treated by Anthony Hartle.³⁴

What I wish to emphasize is that the professional military ethic is properly understood as a vision of how to manage and apply military force from within, in accord with the moral vision inherent in the American experiment in ordered liberty. The moral integration of which I speak is a matter of fighting in accord with the values we aspire to embody, to represent in the world, and on good days actually do embody.

Thus the mission of the military is not simply to win the nation's wars by any means possible. Soldiers are not Huntington's public mercenaries, amoral technicians applying their skill for any state-sanctioned end. The US Soldier as a moral warrior, as a professional, is dedicated to the ethical management and application of military force. That means US Soldiers apply their expertise in accord with the moral values and customs associated with the constitutional design of the nation and the laws of war that are part of that design. US Soldiers exercise their skill in accord with the moral vision that is shared by all citizens, Soldier and civilian alike.

Think, for example, about the Army values. Those do not represent a moral vision alien to the American experiment in ordered liberty. They do not represent a moral vision different from that to which all citizens properly aspire.

All of which is to say that professional differentiation is not synonymous with moral division or separation. Rather, professional differentiation is about a shared moral vision that takes a particular shape within a profession. Specifically, it is about a difference in emphasis, form, and accountability.

Within the profession of arms, because of the responsibilities Soldiers take on and corresponding permissions they are granted, certain aspects of our shared moral vision are emphasized more than they are for the generic civilian who does not have either your responsibilities or permissions. For example, if a civilian fails to show due respect to another person, that person might be insulted or embarrassed, whereas if a Soldier fails to accord persons proper respect as persons, they may end up seriously harmed or dead. In other words, moral standards are emphasized in the profession of arms because the consequences of moral failure may be lethal.

Likewise, within the profession of arms, our shared national moral commitments take a particular form. For example, whereas our shared commitment to justice and dignity/respect will take one form in the classroom and another in the courthouse or the factory, they look very different still on the battlefield.

Again, this is a matter of a shared moral vision that is differentiated; it is not about different or conflicting moral visions. Occasionally, Soldiers will matter-of-factly tell me they are murderers. In so doing they are not confessing an atrocity, rather they are expressing the erroneous conviction that the military operates outside of or in accord with a different or non-moral vision than civilians. After all, they argue, civilians are not authorized to kill and we are.

This is wrong because it fails to recognize that the professional military ethic incorporates the just war discipline precisely to distinguish legitimate killing in warfare from murder. In other words, the just war discipline is the form that our shared moral commitment to justice, respect, concern for welfare, etc. take on the battlefield. Thus, in waging war justly, including killing within the moral parameters of the just war tradition and the laws of war, Soldiers are *not* operating outside of the moral vision of civilians. Rather, just war is the form that our shared commitment to justice, etc. takes downrange. Being a moral warrior, a professional Soldier, is about embodying our shared moral commitments in the very challenging moral space of warfare.

Lastly, professional differentiation is about accountability. One of the major moral differences between professional Soldiers and the generic civilian involves accountability. Whereas all citizens – both Soldier and civilian – ought to be contributing to the shared work of ordered liberty, ought to be serving the general welfare and embodying civic virtues like loyalty, duty, respect, selfless service and so forth, the professional Soldier is held accountable to this moral standard in ways the generic civilian is not. This is due in large part to the responsibilities and permissions Soldiers are granted for the sake of fulfilling their particular responsibilities and, it is worth noting, there are compensations/rewards/honors that accompany this responsibility and accountability.

It is also perhaps worth noting, as a kind of consolation, that the profession of arms is not alone in any of this. All professions, insofar as they are healthy, are morally differentiated from the generic civilian by means of emphasis, form, and accountability to a shared moral vision.

4. The Task Before Us: What is to be Done?

Thus far I have argued the real moral gap is not between civilian and Soldier but between conflicting visions of our national purpose: possessive individualism or ordered liberty. What remains to be done by way of conclusion is to offer a few remarks on what this means for the relation of the professional military ethic to the state.

Joint Responsibility

First, because the moral division is not reducible to civilian v. military, addressing the future of the professional military ethic in the moral state we are in is a joint responsibility. It is the responsibility neither of Soldiers alone, nor of civilians alone, but of all citizens. As Janowitz notes, the future of the military profession is not a military responsibility alone but rests on the vitality of civilian political leadership and I take it that the reference to civilian political leadership means more than politicians.³⁵

Furthermore, this means, as Eliot Cohen has argued, the professional military ethic cannot be a matter only of internal military discussion.³⁶ Rather, it must be a matter for public debate and discussion.

Soldiers' Particular Contribution

Second, Soldiers have a particular contribution to make to this moral mission.³⁷ To the extent that the military is successful at moral formation, to the extent that it does indeed shape competence in the use of military force in accord with a commitment to and character reflective of our national moral values, then it can stand alongside other moral communities that exemplify and inspire participation in the American experiment of ordered liberty. In this regard, John Winthrop Hackett observes, the major service of the military institution to the community of men it serves may well lie neither within the political sphere nor the functional. It could easily lie within the moral. The military institution is a mirror of its parent society, reflecting strengths and weaknesses. It can also be a well from which to draw refreshment for a body politic in need of it.³⁸

In other words, Soldiers contribute to our joint moral mission by serving as exemplars of, for example, the Army values, which are not only Army values but correspond to values that all citizens should aspire to embody.

One other dimension of the particular contribution of Soldiers to this moral mission is that of being prophetic truth-tellers. A theme that emerges with some frequency in the growing body of literature on engaging Soldiers who are wrestling with the trauma of war (be it post-traumatic stress disorder (PTSD) or moral injury) is the Soldier as one who can help the nation wrestle with its moral shortcomings and responsibilities. As William Mahedy says, reflecting on Vietnam,

Each vet, by working through his own moral pain, brings to the larger society the gift of moral seriousness. The 'turning of America' requires a retreat from the triviality that threatens to consume us. The veteran's story, troublesome though it may be to America, is nonetheless salutary because it calls us once again to consider the importance of life and to remember that our actions have consequences beyond ourselves.³⁹

Edward Tick elaborates upon this theme with a bit more poignancy. "America claims innocence and goodness as fundamental traits. We believe that our young men and young women should be able to go to war, get the job done, and return home blameless and well."⁴⁰ We believe, in the memorable words of Martin Cook, in immaculate war. Of course, this belief is driven less by concern for the Soldier than it is to preserve the civilian illusion in their own righteousness and innocence. Civilians want to claim innocence, immunity from the unavoidable truths that war teaches about the human potential for evil, about suffering and pain.⁴¹ Hence the difficulty in dealing with returning Soldiers, for the presence of the Soldier threatens our denials and assertions of innocence. They threaten our refusal to approach the military and war with moral seriousness. Again, Tick is helpful:

Our veterans' terror is real. They come home stumbling out of hell. But we don't see them as they have become. Instead, we offer them beer and turkey dinners,

debriefing and an occasional parade, and a return to routine jobs and weekends in the shopping malls. Because we as a nation are trapped in a consciousness that cannot acknowledge abject suffering, especially if we have caused or contributed to it, we do not see the reality of war.⁴²

As difficult as it may be, the morally serious presence and voice of Soldiers in our midst is crucial to the moral work of fostering the civic republican virtue that is central to this experiment in ordered liberty.

Revitalizing Citizen-Soldier

Third, and finally, there is much work to be done with regard to revitalizing the tradition of citizen participation that is embodied in the citizen-Soldier.

Janowitz recognized the importance of this tradition but was unable to articulate a clear path forward. Today it is widely recognized that the all-volunteer force has many downsides, including isolating the majority of Americans from the issues and concerns of a professional military while encouraging the military itself to adapt to trends opposed to service and sacrifice for the sake of attracting and retaining volunteers.

Nevertheless, there are serious problems with the suggestion that a return to the draft would do much to solve the moral problems created by possessive individualism. Michael Desch argues that a draft would do nothing to address the moral issue.⁴³ He reminds us that one significant criticism of the draft, even before Vietnam, was that it was not representative. Deferments and exemptions permitted the cultural and political elite to avoid military service. Hence, short of a mass mobilization, a draft would resolve little because the military simply does not need and cannot afford so many bodies.

Moreover, one might ask if the military is justifiably confident that it could in fact reform the moral vision of a huge influx of possessive individuals or if such an inundation might work to civilianize the military (even further) in the direction of the possessive individualism/atomistic liberalism that characterizes much of civilian culture?

Some have suggested that instead of a military draft, a system of compulsory national service that included the military as one option be instituted. While this addresses some of the problems with the draft and certainly might help instill a sense of civic participation and service, the question remains if such service is sufficient to counter the possessive individualism of contemporary culture.

Another dimension of the problem of the citizen-Soldier concerns the tradition of the apolitical Soldier. Although it runs against the grain of conventional (Huntingtonian) wisdom, the notion that a Soldier is properly apolitical can work against both the professional military ethic and the civic republican moral culture that underwrites the American experiment.

As Donald Baucom notes, “Most senior officers in the postwar period were heirs of a tradition that discourages men in uniform from taking an active part in the politics of formulating nation policy; they thus tended to shy away from strategy-making and to concentrate

on the execution of policies handed down from civilian experts.”⁴⁴ No wonder the joint chiefs had such difficulty during Vietnam articulating and advocating for strategy.⁴⁵

This brings us to the issue of dissent. Here I recall Burk’s notion of “responsible obedience” – obedience and deference within the parameters of the Constitutional design and values of this nation – and perhaps point as well to Martin Cook’s work on this topic in *The Moral Warrior*. There is a panel devoted to this topic as well during this symposium.

But I will also remind you that Soldiers remain citizens of a democratic order so they cannot rightly renounce their responsibility as citizens to participate in the common work of the polity. Soldiers returning home from war justly complain when civilians refuse to share responsibility for the difficulties and travails of prosecuting a war. Well, the inverse holds as well. Soldiers as citizens are as responsible as other citizens for the political life and political decisions of this country. While the responsibilities of the military profession may impose certain constraints on the forms and means of political engagement, citizen-Soldiers cannot properly renounce political participation.

In this regard, I think it worthwhile to recall Janowitz’s treatment of the question of the professional soldier and politics. He notes that the professional soldier is “above politics,” by which he means not that soldiers are apolitical, unconcerned with political questions, but that they are “above *partisan* politics.”⁴⁶ The profession of arms serves the state and not just one party or faction. The very fact that professional soldiers are committed to the Constitution, that they exercise professional discretion in accord with the moral vision of ordered liberty means they cannot be apolitical.

Such are a few of the tasks and issues before us – all of us, soldier and civilian alike – as we are about the shared work of an ordered liberty for the sake of mutual welfare and blessings.

Notes

1. Peter D. Feaver, Richard H. Kohn, and Lindsay P. Cohn, "The Gap Between Military and Civilian in the United States in Perspective," in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, eds. Peter D. Feaver and Richard H. Kohn (Cambridge, MA: MIT Press, 2001), 1.

2. James Burk, "The Military's Presence in American Society, 1950-2000," in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, eds. Peter D. Feaver and Richard H. Kohn (Cambridge, MA: MIT Press, 2001), 262.

3. Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Harvard, 1957), 3.

4. Huntington, *The Soldier and the State*, 62-3.

5. Huntington, *The Soldier and the State*, 71.

6. Huntington, *The Soldier and the State*, 73.

7. Huntington, *The Soldier and the State*, 78.

8. Huntington, *The Soldier and the State*, 78. This passage is striking for a number of reasons, not the least being that apparently he does not think the genocide clearly meets the criteria of "extreme case," the way he privatizes conscience, thus leaving the individual alone to face the state, and the way he thinks the state's welfare can be harmonized with genocide.

9. James Burk, "Responsible Obedience by Military Professionals: The Discretion to Do What Is Wrong," in *American Civil-Military Relations*, eds. Suzanne C. Nielsen and Don M. Snider (Baltimore, MD: John Hopkins University Press, 2009), 149ff.

10. In an essay published shortly before the end of the draft in 1973 and birth of the AVF, Janowitz places more emphasis on the contribution to civilianization by moral, anti-military dimensions of "advanced industrial societies." See Janowitz, "Volunteer Armed Forces and Military Purpose," *Foreign Affairs*, (April 1972).

11. Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (Glencoe, IL: Free Press, 1960), 8.

12. Janowitz, *The Professional Soldier*, 9.

13. Janowitz, *The Professional Soldier*, 10.

14. Janowitz, *The Professional Soldier*, 12.

15. Janowitz, *The Professional Soldier*, 10.

16. Janowitz, *The Professional Soldier*, 14.

17. Janowitz, *The Professional Soldier*, 418ff.

18. Janowitz, *The Professional Soldier*, 264ff.

19. Note that this correlates with Martin Cook's analysis of some military resistance to being used in operations other than war in the 1990s. He observes that the Powell-Weinberger Doctrine (that the military is only to be used to win wars decisively) was an attempt by some to set the terms by which the military would be used. Moreover, it is not a straightforward assertion of military expertise but is a mix of political judgments that do not correspond historically with the array of uses to which the military has been put and the practices in which it has engaged. See Martin Cook, *The Moral Warrior* (Albany, NY: SUNY, 2004), 82-3. For an overview of the array of uses of the military, see Leonard Wong and Douglas V. Johnson, "Serving the American People: A Historical View of the Army Profession," in *Future of the Army Profession*, 2d, ed. Lloyd J. Matthews (Boston: McGraw Hill, 2005), 93-112.

20. Janowitz, *The Professional Soldier*, 421.

21. Janowitz, *The Professional Soldier*, 249, 422-3.

22. Although Huntington does not describe the two visions accurately. His Conservative Realism is actually a species of Liberalism. On this point, see James Burk, "Theories of Democratic Civil-Military Relations," *Armed Forces & Society* 29.1 (Fall 2002), 7-29.

23. Judith Shklar, "The Liberalism of Fear," in *Political Thought and Political Thinkers*, ed. Stanley Hoffmann (Chicago, IL: University of Chicago Press, 1998), 3-20.

24. John Stuart Mill, *On Liberty* Chapter 1, 81.

25. This distinction loosely correlates with Isaiah Berlin's famous distinction between positive and negative liberty.

26. The meaning and political-philosophical lineage of this vision is hotly contested. My understanding of the term will become clear momentarily. See Thomas Spragens, Jr. *Reason and Democracy* (Durham, NC: Duke University Press, 1990) for an account of Liberalism that encompasses both the atomistic vision previously mentioned and a civic republican strand.

27. Edward Coffman, "The Long Shadow of *The Soldier and the State*," *The Journal of Military History*, 55 (January 1991), 81.

28. James Burk, Peter D. Feaver and Richard H. Kohn (eds.) "The Military's Presence in American Society, 1950-2000," in *Soldiers and Civilians: The Civil-Military Gap and American National Security* (Cambridge, MA: MIT Press, 2001), 248.

29. See Donald R. Baucom, "The Professional Soldier and the Warrior Spirit," *Strategic Review* (Fall 1985), 17-24.

30. See Peter D. Feaver and Richard H. Kohn, eds. *Soldiers and Civilians: The Civil-Military Gap and American National Security*.

31. See Laura L. Miller and John Allen Williams, "Do Military Policies on Gender and Sexuality Undermine Combat Effectiveness?" in *Soldiers and Civilians: The Civil-Military Gap and American National Security*, eds. Peter D. Feaver and Richard H. Kohn (Cambridge, MA: MIT Press, 2001), 361-402.

32. Burk, "Military's Presence," 264.

33. Burk, "Military's Presence," 270.

34. Anthony Hartle, *Moral Issues in Military Decision Making*, 2d Edition (Lawrence, KS: University Press of Kansas, 2004).

35. Janowitz, 435.

36. Eliot A. Cohen, "Why the Gap Matters," *The National Interest* 61 (Fall 2000), 47.

37. Huntington (88) helpfully enumerates several ways officers have broad influence in society: 1) Affiliations with other powerful groups; 2) Economic and human resources under their control; 3) Authority assumed in other power structures; and 4) Prestige and popularity of officers and leaders.

38. General Sir John Winthrop Hackett, "The Military in the Service of the State," USAFA Harmon Memorial Lecture #13. <http://www.usafa.edu/df/dfh/harmonmemorial.cfm> (accessed 9 September 2011).

39. William P. Mahedy, *Out of the Night: The Spiritual Journey of Vietnam Vets* (Knoxville, TN: Radix Press, 2004), 34.

40. Edward Tick, *War and the Soul: Healing Our Nation's Veterans from Post-traumatic Stress Disorder* (Wheaton, IL: Quest Books, 2005), 155.

41. Tick, *War and the Soul*, 158.

42. Tick, *War and the Soul*, 163.

43. Michael Desch, "Explaining the Gap: Vietnam, the Republicanization of the South, and the End of the Mass Army," Peter D. Feaver and Richard H. Kohn (eds.), *Soldiers and Civilians: The Civil-Military Gap and American National Security*, (Cambridge, MA: MIT Press, 2001), 289-324. Desch argues that the principal cause of the values gap is the end of the mass army –

meaning mass mobilization and not simply the end of the draft – and the ideological shift of the American south toward the Republican party, since most officers come from the south.

44. Baucom, “The Professional Soldier,” 19.

45. See H. R. McMaster, *Dereliction of Duty: Johnson, McNamara, the Joint Chiefs of Staff, and the Lies That Led to Vietnam* (New York: Harper Perennial, 1998).

46. Janowitz, 233.

Chapter 3

Wounded Warriors as Army Professionals and the Tension Between Selfless Service and Self-Interest

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Background

The warrior ethos obligates the Army to “never leave a fallen comrade,” and care for those injured in combat.¹ However, executing this obligation mainly depends on medical technology and military bureaucracy. In previous conflicts, the military largely deferred to civilian systems for long-term rehabilitation and transition. During the Global War on Terror (GWT), medical technology increased battlefield casualty survival rates and improved rehabilitation. From this came the concept of the “wounded warrior,” a disabled Soldier who remained in the military system for rehabilitation and transition.² According to media and government investigations into the treatment of injured Soldiers at Walter Reed Army Medical Center (“Walter Reed”), this created an unanticipated challenge for the Army as severely injured Soldiers came home to an archaic bureaucracy and dilapidated facilities.³

In response to these accusations of neglect, the Army established the Wounded Warrior Transition Brigade, to “help outpatients navigate a confusing world of paperwork, appointments and readjustments to civilian life.”⁴ The program currently includes 25 Warrior Transition Units (WTUs) across the United States, Puerto Rico, and Germany. WTUs have supported over 65,700 Soldiers.⁵ The WTU’s mission focuses on helping combat and non-combat wounded, ill, and injured Soldiers recover and transition back to military service or civilian life – an “organizational and cultural shift” for the Army.⁶

The Walter Reed scandal illustrates how the Army’s bureaucratic nature can lead to moral failure. The Army’s doctrinal publication on the Army Profession (ADRP 1) states:

These two aspects of the institution – bureaucracy and profession – have very different characteristics, ethics, and ways of behaving. Both aspects are necessary within the variety of organizations and functions within the Army, but ***overall the challenge is to keep the predominant culture and climate of the Army as that of a military profession.*** [emphasis added].⁷

A critical dimension of the profession and bureaucracy tension is selfless service versus self-interest. The Army profession requires a commitment to selfless service and sacrifice, while bureaucracies assume competition and self-interest.

Discussion

The selfless service versus self-interest dichotomy is a major challenge for wounded warriors as Army professionals. Wounded warriors have multiple roles – Soldier, recovering patient, and disabled veteran. Current Army doctrine states that Soldiers “must first self-identify with being a member of the Army Profession.”⁸ They are expected “to serve daily according to the profession’s ethic and values to maintain the American people’s trust.”⁹

However, wounded warriors have been tasked with a self-interested mission, focusing on their own recovery and transition. They operate in a highly bureaucratic environment – as a patient in the medical system, a claimant in the Department of Defense (DoD) and Department of Veterans Affairs (VA) disability benefits system, and a disabled veteran-representative to external groups such as civilian charities and high-level military and government leaders.¹⁰ Being Soldiers in transition, they are adopting new roles as non-practicing Army professionals and disabled veterans.

Selfless service requires Soldiers to “put the welfare of the nation, the Army and your subordinates before your own.”¹¹ ADRP 1 states that Army professionals are committed to

unlimited liability – accepting risk of serious personal harm or even death. This unlimited liability distinguishes the Army Profession of Arms and the other armed forces from other federal employees and other professions. This is a vital aspect of the Army Ethic of honorable service: a true ethos of service before self.¹²

Army professionals are expected to “value the service they render to society more than the benefits society provides them.”¹³ According to the current definition of an Army professional, this obligation does not end when wounded warriors transition out of the Army, as “whether retiree or veteran, these men and women are Soldiers for life and should consider themselves as a living part of the profession and apply their service ethic throughout the remainder of their lives.”¹⁴ Thus, wounded warriors’ commitment to selfless service is an important part of their transition out of the Army and in turn, the WTU mission.

While the first Soldiers injured in the Global War on Terror arrived home to a dearth of support and resources, today’s wounded warriors gain “access to perks and entitlements that are not available to [s]oldiers that are not in a WTU.”¹⁵ Depending on their level of disability and circumstances, wounded warriors are eligible for entitlements that include: Traumatic Servicemembers Group Life Insurance payments; Social Security Disability; caregiver benefits such as non-medical attendant pay and Special Compensation Assistance for Activities of Daily Living; special housing allowances; special pay and compensation including civilian charity, cash grants, luxury trips, airplane tickets, and housing; and political and social connections. All of these are in addition to their regular military benefits and compensation.¹⁶

Army doctrine does not define unlimited liability with respect to disability benefits and compensation. Arguably, this commitment does not obligate Army professionals to forgo all benefits, compensation, and philanthropy for their injuries and illnesses. In his discussion of professional ethics and self-interest, ethicist Edmund Pellegrino asserts that there is a distinction between legitimate self-interest and selfish self-interest. It hinges on using professional practice to meet basic needs versus for personal gain.¹⁷ For purposes of this paper, I shall use the terms “self-interest” to mean selfish self-interest; using benefits, compensation, and charity for personal gain beyond basic needs. Conversely, “selfless service” obligates Army professionals to use material support to meet basic needs so they can continue to serve.

Government officials and academics have expressed concerns about wounded warriors’ self-interested behavior.¹⁸ A 2010 United States Army Inspector General Agency (“Army

IG”) report “noted a ‘sense of entitlement’ among some [wounded warriors]. Various programs, regulations, and policies entice Soldiers into a mindset to achieve personal gains.”¹⁹ Additionally, this “actual or perceived heightened sense of status is reinforced by senior military/civilian leaders involvement in [wounded warriors’] concerns/issues.”²⁰ In his study of combat amputees at Walter Reed, ethnographer Seth Messinger observed that the system “encouraged [wounded warriors] to see themselves as a specific class of citizens with a unique status that can be leveraged for access to social benefits.”²¹ He found that the Soldiers believed they “are owed things from the government they serve as opposed to the people they are sworn to defend.”²² Lieutenant Colonel Daniel Gade, West Point professional and a combat amputee himself, stated that

the design of VA benefit policies, which distort incentives and encourage veterans to live off of government support instead of working to their full capability.

Adding to the problem is a culture of low expectations, fostered by the misguided understanding of “disability” upon which both federal policy and private philanthropy are often based. The result is that, for many veterans, a state of dependency that should be temporary instead becomes permanent.²³

Thus, a program borne out of the warrior ethos risks creating Army professionals focused on personal self-interest, rather than committed to selfless service.

According to Pellegrino, various factors lead professionals to compromise or reject their professional moral obligations in order to protect their self-interest.²⁴ One is the belief that the professional must protect his self-interest from political and socio-economic forces such as commercialization, competition, and government regulation. A second factor is the perception that their profession is being reduced to a trade or occupation. Finally, the professional begins to doubt the applicability and validity of professional ethics in the context of conventional morality. I will use the following vignettes based on my research and experiences at Walter Reed to illustrate how the tension between selfless service and self-interest affects wounded warriors.

Sergeant A is an infantry Soldier with a wife and three children. During his second deployment to Afghanistan, he stepped on an improvised explosive device (IED) while on patrol. He lost both of his legs and suffered a mild traumatic brain injury (TBI).

Sergeant A flourished in the Army. He planned to make it his career. He enjoyed staying physically fit, loved being a squad leader, mentoring Soldiers, and protecting the world “from bad guys.”

When he joined the WTU, he was told that his mission was to “heal” and “successfully transition.”²⁵ He was assigned a “triad of care,” a nurse case manager, section leader, and primary care manager tasked with the mission to support him.²⁶

According to the WTC website, “(t)he Triad creates *the familiar environment of a military unit* and surrounds the Soldier and his/her Family with comprehensive care and support, *all focused on the wounded warrior’s sole mission to heal* [emphasis added].”²⁷ Another wounded warrior advised him that “Transition Is The Mission - Healing Is The Key - Stay focused on YOU.”²⁸

Sergeant A and his team have been assigned himself as a mission. In Afghanistan, he was focused on the mission and his men's safety and wellbeing. He stepped on the IED trying to protect his men on patrol. Now he as an entire team focused on helping him. This seems to contradict the notion that "selfless service is larger than just one person."²⁹

As an amputee, Sergeant A participates in the DoD's amputee care program at the Military Amputee Training Center (MATC). The program focuses on returning him to pre-injury physical functioning. He gains access to the special training facilities; high-tech prosthetics including a swimming leg, a rock climbing leg, and motorized leg; and special trips and events. He also has a stack of business cards from military and political higher-ups who visited the MATC to meet "wounded warriors." They told him to contact them if he needs anything. Sergeant A begins to see himself as the member of a special interest group, rather than an Army professional and public servant.³⁰

As an amputee peer visitor, Sergeant A met one of the Boston bombing victims. Comparing experiences, he realizes that as a wounded warrior amputee, he has access to care and resources not available to civilian amputees. He does not believe that he should have access to better care and benefits than she does. After all, he signed up for the military knowing the risks of combat. She probably never considered the risk of an IED at the Boston Marathon.

Arguably, selfless service obligates him to use his status to advocate for equal care for all amputees. However, there are more than 50,000 amputees in the VA and 2 million amputees in the United States.³¹ He is one of approximately 1,500 Iraq and Afghanistan combat amputees. Advocating for equal access could reduce his resources, even if it is more than he needs. Given that veteran's resources have historically ebbed and flowed, it is not unreasonable for Sergeant A and his fellow combat amputees to choose protecting their self-interests over selfless service. The WTU validates his self-interested behavior by encouraging him to focus on himself and maximize his resources, suggesting that his injury exculpates him from his obligations as an Army professional. In the end, Walter Reed Army doctors lobbied to get the Boston bombing victim's long-term care transferred to Walter Reed and the MATC.³² This action by Army leadership potentially reinforces wounded warriors' perception that access to comprehensive care requires special status.

Like many wounded warriors, Sergeant A goes through the DoD and VA Integrated Disability Evaluation System (IDES). During the IDES process, he will be evaluated for fitness for duty, eligibility for DoD medical retirement, and a VA disability rating for service-connected disabilities.³³ The highly bureaucratic process was at the heart of the 2007 Walter Reed scandal. The DoD found him not fit for duty, but he has the option to return to active duty through the Army's Continuation Active Duty (COAD) program.³⁴ The VA determined that he has a permanent and total disability because he lost both feet. He is eligible for a 100% disability rating from the VA.³⁵ The COAD program, like the MATC, focuses on his physical functioning. But he would be leveraging his status as a wounded warrior to qualify for the program. If he chooses to continue to serve, he subjects himself to the uncertainty of Army bureaucracy and force reduction. The VA system, based on a medical model and antiquated ratings schedule, assumes that he cannot work.³⁶ As a "disabled veteran," he can collect VA benefits and compensation including caregiver compensation

for his wife, TRICARE retiree benefits, Combat Related Special Compensation, and Social Security Disability Insurance. If he works as a civilian, he loses some of those benefits and subjects himself to greater economic uncertainty. Neither system indicates what he should do as an Army professional.

Captain B is a single infantry officer who joined the WTU after surviving an IED blast in Afghanistan where he was in charge of security detail for the brigade commander. Captain B lost his leg when he tackled a suicide bomber attempting to assassinate his commander. He only survived because the terrorist's suicide vest did not fully detonate.

When Captain B joined the WTU, he was reminded that he is both an Army professional and a patient. He has to check in every morning with his section leader, an E-6.³⁷ He has to develop a Comprehensive Transition Plan (CTP) with his care team to complete his mission of healing and transition.³⁸ According to the WTU fact page,

The CTP uses six domains: career, physical, emotional, social, family, and spiritual to establish goals that map a Soldier's transition plan. As the owner of the CTP, the Soldier is ***empowered to take charge*** of his own transition and is ***accountable for developing and achieving his goals while complying with all the medical and military responsibility***. [emphasis added].³⁹

Captain B must use "Specific, Measurable, Actionable, Realistic, and Time Bound (SMART) action statements (to ensure) that Soldiers have a clear understanding of their goals and how to achieve them."⁴⁰ When he said he felt micromanaged, Captain B was advised to "take ownership of his/her plan to maximize the resources available to the WTU."⁴¹ As a wounded warrior, Captain B's professional practice has become administrative tasks to further his self-interest. As security detail, he was trusted with the brigade commander's life. After his injury, he feels like the Army does not trust him to take care of himself.

As a WTU wounded warrior, Captain B is required to participate in career and education readiness activities and incorporate them into his CTP. Committed to selfless service, Captain B wants to use his remaining time in the WTU to serve his community. Based on the Comprehensive Soldier Fitness program, the CTP seeks to increase physical and emotional resilience to facilitate wounded warrior's recovery and transition.⁴² The CTP also incorporates a career component, but it is based on an occupational model.⁴³

While pragmatic, the process suggests that outside of the military, his expertise translates to skills and his professional practice is reduced to an occupation. Volunteer activities are work internships rather than service opportunities. The internships are intended to help Captain B find a civilian occupation, rather than foster a life-long commitment to selfless service as a non-practicing Army professional.

Corporal C is a paratrooper with the 82nd Airborne. He joined the WTU at Walter Reed after a training accident. Like 95 percent of the current WTU population, he is not a combat casualty.⁴⁴ He broke his leg and injured his back but doctors are optimistic about his recovery. He is expected to be able to make a full recovery and return to full duty.

With the end of the wars, he is planning on separating from the Army after his end of active service this year.

As a wounded warrior in the WTU, Corporal C is eligible for benefits and compensation he would lose when he returns to full duty. According to the Army IG, WTU cadre reported that injured Soldiers enter the WTU motivated to return to duty but after a few weeks in the system, they started to try to prolong their stay and maximize their benefits.⁴⁵ Consider the case of Social Security Disability. A wounded warrior in an online forum posted, “OH OH OH!! The number one reason to go to a WTU, is, you are able to apply for Social Security while on active duty. But, in a regular unit you can’t. So, that is my big reason right there.”⁴⁶ As a Soldier at a military treatment facility, Corporal C likely qualifies for Social Security Disability because he is not performing what the Social Security Administration considers substantial work, the military occupational specialty for which he was trained.⁴⁷ The military job he is being paid to do, healing and transitioning, is not considered substantial work and entitles him to disability compensation.

As a patient in the medical system, Corporal C’s point and place of duty is his medical appointments.⁴⁸ As a wounded warrior, Corporal C has “the right to step to the head of the line ahead of other military patients and veterans at the pharmacy, the various clinics, and in (physical therapy).”⁴⁹ Messinger observed that “patients recognize that this priority status has engendered a sense of entitlement for them, and they are wary of what will happen as they return to the duty stations or transition to (the VA).”⁵⁰ According to Messinger “one patient mentioned that he is acutely aware that as he steps in front of a disabled veterans from past wars to receive a service that he is entitled to at Walter Reed, the day will come when someone steps in front of him.”⁵¹ For Corporal C, being an obedient Soldier and attending his medical appointments engenders both a sense of entitlement and scarcity. Exaggerating his back pain symptoms or bringing up new medical issues not related to his injury preserves his status in the system. Sacrificing integrity for self-preservation does not seem unreasonable, especially given his current mission is to prioritize his medical recovery.

Pellegrino argues that self-interested behavior reflects a moral malaise within a profession, which erodes the moral identity of the professional and the profession.⁵² ADRP 1 states:

Moral failure by Army professionals, in garrison or in combat theater, devastates the Army’s standing with the American people and the international community. Army professionals must choose to serve daily according to the profession’s ethic and values to maintain the American people’s trust. This is what it means for Army professionals to serve honorably.⁵³

Moreover, “(t)he WTU population, as a whole, is low density when compared to the balance of forces; yet the high visibility it garners is due to everyone wanting to do the ‘right thing’ for America’s Soldiers.”⁵⁴ As a high visibility population, wounded warriors have an amplified impact on the civilian-military relationship. By fostering entitlement and self-interest, the Army’s efforts to prevent “another Walter Reed” undermine the Army’s standing as a profession. ADRP 1 states that Soldiers for life “remain influential members of the profession as they assimilate back into civilian life and live among the citizens the Army serves.”⁵⁵ Therefore, self-interest and entitlement affects the Army profession after Soldiers leave the WTU.

Three solutions are offered to address the tension between selfless service and self-interest for WTU wounded warriors.

- One approach is changing American culture and society, specifically the privatization of American civic life and reducing the power of self-interest groups.⁵⁶ However, this is largely beyond the Army's control and requires the Army to rise above conventional morality.
- A second approach is to reduce the perverse incentives in wounded warrior policies and programs that encourage self-interested behavior.⁵⁷ This approach is unlikely to foster significant change in the near future. The Walter Reed scandal led to significant Congressional and DoD oversight of wounded warrior care, leaving the Army with little ability to self-police these policies and programs.
- A third approach is to cultivate effacement of self-interest.⁵⁸ Arguably, Soldiers' willingness to risk life and limb on the battlefield demonstrate effacement of self-interest. However, this attitude does not necessarily translate to the WTU environment. As Soldiers for life and disabled veterans, wounded warriors will continue to grapple with the tension between self-interest and selfless service. A person of character is more likely to exhibit effacement of self-interest and choose selfless service over personal gain.

Conclusion and Recommendations

In conclusion, character development in the Army is largely left to the individual Soldier.⁵⁹ As the WTU environment encourages self-interest and entitlement, the Army should incorporate character development to mitigate the program's unintended consequences. Some may argue that the CTP, based on the Comprehensive Soldier Fitness coupled with continued Army professional education, is sufficient. However, Army professional ethics assumes selfless service and sacrifice, while the WTU culture promotes entitlement and self-interest.

Further, preserving that commitment to selfless service requires a more holistic approach to character development. Specifically, character development based on a goal theory approach could be added to wounded warrior's CTP.⁶⁰ I would also add a community service component to the WTU program. Community service would mitigate entitlement and promote civic service.⁶¹ Just as the WTU work internship program helps wounded warriors adjust to working in the civilian world, community service promotes continued service in veterans civilian communities.

Notes

1. Department of the Army, "Warrior Ethos," (n.d.) <http://www.army.mil/values/warrior.html> (accessed 5 May 2015).
2. Note WTU policy currently refers to "wounded warriors" as "Soldiers." However, for purposes of this paper, I will use "wounded warrior" to refer to wounded, ill, and injured soldiers assigned to the WTU. See US Army Medical Services, *Warrior Care and Transition Program*, Army Regulation 40-58 [AR 40-58], (Washington, DC: Headquarters, Department of the Army, 2015).
3. Nava Blum and Elizabeth Fee, "Critical Shortcomings at Walter Reed Army Medical Center Create Doubt," *American Journal of Public Health* 98, (2008), 2159-2160.
4. Josh White and Ann Scott Tyson, "General with Combat Experience to Become Walter Reed Deputy," *Washington Post* (9 March 2007), final edition. <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/08/AR2007030801889.html> (accessed 11 March 2015).
5. Colonel Chris R. Toner, US Army Commander Warrior Transition Command, *Department of Defense and Military Service Wounded Warrior Program Update*, 114th Congress, 1st sess., 3 February 2015, 2-3; David Wood, "Thousands of Soldiers Unfit for War Duty," *Politics Daily*, 5 July 2010, <http://www.politicsdaily.com/2010/07/05/thousands-of-soldiers-unfit-for-war-duty/> (accessed 3 May 2015).
6. US Army Inspector General Agency (IGA), *Inspection of the Warrior Care and Transition Program*, (2010). http://graphics8.nytimes.com/packages/pdf/us/10_drugs-WCTP-Insp-Rpt1.pdf (accessed 2 March 2015).
7. Department of the Army, *ADRP 1, The Army Profession*, (Washington, DC: Headquarters, Department of the Army, 2013), 1-4.
8. Department of the Army, *ADRP 1, The Army Profession*, 3-6, 3-25.
9. Department of the Army, *ADRP 1, The Army Profession*, 4-2.
10. See Seth D. Messinger, "What Do We Owe Them: Veterans, Disability and the Privatization of American Civic Life," *Journal of Religion, Disability & Health* 12, (2008): 267-286; Daniel M. Gade, "A Better Way to Help Veterans," *National Affairs* 16, (Summer 2013) 53-69; US Army IGA, *Inspection*.
11. Department of the Army, *ADRP 1, The Army Profession*, B-4.
12. Department of the Army, *ADRP 1, The Army Profession*, 4-4.
13. Department of the Army, *ADRP 1, The Army Profession*, 1-2, 1-9.
14. Department of the Army, *ADRP 1, The Army Profession*, 3-5, 3-21.
15. Messinger, "What Do We Owe Them," 281.
16. US Army Warrior Transition Command (WTC), Warrior Transition Command Homepage, <http://www.wtc.army.mil/index.html> (accessed 10 March 2015); Gade, "A Better Way;" Messinger, "What Do We Owe Them."
17. Edmund D Pellegrino, "Character, Virtue and Self-interest in the Ethics of the Professions," *Journal of Contemporary Health Law & Policy* 5, (1989): 53.
18. See Army IGA, *Inspection*, (2010); Messinger, "What Do We Owe Them," 267-286; Gade, "A Better Way to Help Veterans," 53-69.
19. Army IGA, *Inspection*, A-17.
20. Army IGA, *Inspection*, A-17.
21. Messinger, "What Do We Owe Them," 278.
22. Messinger, "What Do We Owe Them," 282.
23. Gade, "A Better Way," 54.
24. Pellegrino, "Character, Virtue and Self-interest," 57.

25. AR 40-85, 5-5.
26. AR 40-58, 110.
27. WTC, "Comprehensive Transition Plan," <http://www.wtc.army.mil/modules/soldier/s1-wctpProgram.html> (accessed 13 March 2015).
28. "CBWTU Questions," *Pebforum website*, <http://www.pebforum.com/site/threads/cbwtu-questions.16623/> (accessed 13 March 2015).
29. Department of the Army, Field Manual 7-21.13, *The Soldier's Guide*, (Washington, DC: Headquarters, Department of the Army, 2004), C1.
30. Messenger, "What Do We Owe Them," 278.
31. Office of Rehabilitation Services, "Fact Sheet for Amputee System of Care," <http://www.prosthetics.va.gov/factsheet/ASoC-FactSheet.pdf> (accessed 4 May 2015); Amputee Coalition, "About Us," <http://www.amputee-coalition.org/about-us/> (accessed 8 April 2015).
32. See Eric Moskowitz, "Her Decision, Their Life," *The Boston Globe*, 24 January 2015, <http://www.bostonglobe.com/metro/2015/01/24/her-decision-their-life-boston-marathon-survivor-debates-whether-live-with-pain-become-double-amputee/TMp4i6hRZHO9bDgvwxhGhK/story.html> (accessed 30 March 2015); James Dao, "War and Sports Shape Better Artificial Limbs," *The New York Times*, 17 April 2013, <http://www.nytimes.com/2013/04/18/us/war-and-sports-shape-better-artificial-limbs.html> (accessed 30 March 2015).
33. WTC, "Integrated Disability Evaluation System." <http://www.wtc.army.mil/modules/soldier/s6-ides.html> (accessed 17 March 2015).
34. WTC, "Continuation on Active Duty / Continuation on Active Reserve (COAD/COAR)," *Warrior Transition Command*, <http://www.wtc.army.mil/modules/soldier/s6-coadCOAR.html> (accessed 10 March 2015).
35. 38 *CFR* 4 § 4.15 (2011). <https://www.law.cornell.edu/cfr/text/38/4.15>** no bibliography (accessed 10 March 2015).
36. Gade, "A Better Way," 58-62.
37. AR 40-58, 20-25.
38. AR 40-58, 20-25.
39. WTC, "Comprehensive Transition Plan" *Warrior Transition Command*, <http://www.wtc.army.mil/modules/soldier/s1-ctp.html> (accessed 10 March 2015).
40. WTC, "Comprehensive Transition Plan."
41. WTC, "Internship Manual," *Warrior Transition Command*, http://www.wtc.army.mil/documents/manuals/Internship_Module_Soldier_Manual_FINAL (accessed 10 March 2015).
42. AR 40-58, 2-21.
43. WTC, "Career Planning," *Warrior Transition Command*, <http://www.wtc.army.mil/modules/soldier/s4-careerPlanning.html> (accessed 10 March 2015).
44. WTC, "Warrior Transition Command Fact Sheet," *Warrior Transition Command*, http://www.wtc.army.mil/documents/factsheets/WTC_Overview_FactSheet_FINAL.pdf (accessed 10 March 2015).
45. Army IGA, *Inspection*, A-17.
46. "WTU Issues," *Pebforum*, <http://www.pebforum.com/site/threads/wtu-issues.22080/> (accessed 10 March 2015).
47. Ronald Thomas, "Social Security Benefits for Wounded Warriors," (lecture at Department of Defense Recovery Care Coordinator Training, Alexandria, Virginia, 6 January 2014).
48. AR 40-58, 6-31.
49. Messenger, "What Do We Owe Them," 270.
50. Messenger, 270.
51. Messenger, 270.

52. Pellegrino, "Character, Virtue and Self-interest," 72-73.
53. Department of the Army, *ADRP 1, The Army Profession*, 4-2.
54. Army IGA, *Inspection*, A-21.
55. Department of the Army, *ADRP 1, The Army Profession*, 3-5, 3-21.
56. Messinger, "What Do We Owe Them," 283-285.
57. Gade, "A Better Way," 67-69.
58. Pellegrino, "Character, Virtue and Self-interest," 58, 67-73.
59. See Brian M. Michelson, "Character Development of US Army Leaders: A Laissez Faire Approach," *Military Review*, (September-October, 2013): 30-39; Paul T. Berghaus, and Nathan L. Cartagena, "Developing Good Soldiers: The Problem of Fragmentation within the Army," *Journal of Military Ethics* 12, no. 4 (2013): 287-303.
60. Berghaus and Cartagena, "Developing Good Soldiers," 295.
61. See August Hoffman and Julie Wallach, "Reducing Self-Entitlement Attitudes Through Service Learning," *The Community College Enterprise*, (Spring 2007): 81-90; Judith A. Boss, "The Effect of Community Service Work on the Moral Development of College Ethics Students." *Journal of Moral Education* 23, no. 2 (1994): 183-198.

Chapter 4

The Unjustness of the Current Incantation of *Jus Post Bellum*

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Jus post bellum was originally conceived as an extension of modern just war theory. Specifically, it was aimed at examining the justness and morality of actions during war, *jus in bello*, in relationship to negotiations for peace in the post-war setting. Under the initial conception of *jus post bellum*, considerations of distinction of enemies from civilians, for example, takes on a more pointed meaning as one has to calculate how much collateral damage is appropriate given the longer-term end-goal of successful and beneficial peace negotiations. Unfortunately, *jus post bellum* has recently been expanded to mean that the victor in the war is now responsible for the long-term well-being of the people it has defeated. This has led to a concerted outcry for post-war nation-building which neither leads necessarily to successful negotiations nor ensures a better or lasting peace. In fact, current conceptions of *jus post bellum* remove national interest from the equation altogether, replacing all military endeavors with one monolithic national interest: liberal imperialism.¹ Further, current incantations of *jus post bellum* obviate the possibility of a punitive strike or punitive expedition even though this might be exactly what is needed in certain cases to create a better peace than existed prior to conflict.

This paper is an exploration of the current incantation of *jus post bellum*. The concept of an incantation was chosen purposively as proponents of *jus post bellum* are engaging in a dogmatic approach to war termination, oblivious to the complexities and realities of conflict and in violation of just war theory itself. In particular, *jus post bellum* violates the just war tenet of the state entering into war having a reasonable chance of success. Because *jus post bellum* is so prescriptive and, thus, so strategically constrictive, almost no military intervention can be justified. Perhaps this is the intent of *jus post bellum* theorists, but if it is not, the current manifestation of this addition to just war theory is simultaneously unrealistic and dangerous.

This paper will begin with a brief examination of the development of *jus post bellum* with special emphasis placed on its liberal imperialist tendencies. This is followed by an explanation of the links between *jus post bellum* and responsibility to protect. After this, *jus post bellum* is exposed for not properly considering the complexities of war through a brief case study; the unsuccessful intervention in Somalia in 1992-93. This builds to the conclusion that *jus post bellum* is unjust because it underestimates the complexity and reality of war and post-war reconstruction and will therefore create more violence over the long-term rather than creating a lasting peace. *Jus post bellum* also violates the *jus ad bellum* notion of “probability of success,” as the post-war undertaking is so massive and so invasive that it unlikely to succeed.

The Development of *Jus Post Bellum*: The Historical Antecedents

Currently there are two main areas of theoretical concern that are addressed in the just war theory literature. These are *jus ad bellum* and *jus in bello*. *Jus ad bellum* deals with the justness of a war, especially emphasizing the just declaration of war. *Jus in bello* applies to the way in which the war is fought. The predominant thought currently is that there needs to be a third area of just war theory dealing with the post-conflict and rebuilding and reconstruction phase of war.² This area has been dubbed *jus post bellum*.

Philosophers and international legal scholars argue that a tradition of a just peace or justice after combat has ended is not new. They correctly note that early notions of *jus post bellum* extend back to Saint Augustine and Hugo Grotius. However, modern theorists have drawn a distinction between Saint Augustine's and Hugo Grotius' conception of a just peace. Carsten Stahn argues that Saint Augustine was one of the first to link war to a concept of "post-war peace" in the book *City of God* but it was Hugo Grotius who refined the concept.³ This is a common and important distinction to explore. The reason Grotius is given primacy over Saint Augustine is because Saint Augustine was exploring the concept from a state's interest viewpoint, leading to arguments of being mindful of the destruction of war in order to increase the odds of a successful surrender or peace negotiations once hostilities ended.

Hugo Grotius is more often linked to concepts such as the responsibility to protect and the current form of *jus post bellum*. Stahn argues Grotius is one of the first to address post war concepts such as just war termination, rules of surrender, and how peace treaties should be interpreted.⁴ Grotius is also one of the first to argue that punitive wars can be undertaken to stop another sovereign ruler from violating the human rights of his people.⁵ While there is an obvious corollary between Grotius' punitive wars and the notion of responsibility to protect, there is a more nuanced implication which is germane to our investigation of *jus post bellum*. Grotius' comment on punitive strikes implies that post hostilities, the victor has a duty to ensure that the society it leaves behind respects its citizen's human rights. As we will see below, this becomes the crux of the *jus post bellum* argument and also major part of the problem with this concept from a just war perspective.

To these two most oft-cited predecessors of *jus post bellum* theory, Brian Orend adds a third, Immanuel Kant. Kant argues that when there is a clear belligerent, aggressor state which is successfully defeated, the winning state or coalition has a duty to establish a more peaceful and progressive social order within the defeated state.⁶ Further, Orend argues Kant is warning that war is not aimed solely at resolving the current conflict but that it must also "contribute to and strengthen the peace and justice of the international system more broadly."⁷ This, too, has been brought forward into the current conception of *jus post bellum* almost verbatim. There are other historical theorists who have been linked to *jus post bellum* but these are the most often cited and most relevant to the current conception. The next section of this paper will examine the current state of *jus post bellum* in detail in order that the dangerous flaws with this conception become apparent.

Modern *Jus Post Bellum* and the Liberal Imperialism Contained Within

Modern justice after war arguments are often linked back to the peace treaties after the Second World War. For one of the first times “the peace settlements after World War II contained human rights clauses and provisions for the punishment of human rights abuses.”⁸ The key here is the emphasis on human rights, and more specifically, modern scholars assertions that international law has matured enough to successfully impose human rights standards and constrain or even outlaw most wars.⁹ Carsten Stahn even argues that the historical war/peace dichotomy has lost its meaning because of the outlawry of war and blurring of boundaries between conflict and peace. The point Stahn makes regarding the blurring of the boundaries between war and peace is salient. This point is echoed in a broader way by Everett Dolman in his book *Pure Strategy*. In his book, Dolman defines strategy as a plan for seeking continuing relative advantage in a process that never ends.¹⁰ If one accepts this definition of strategy, then it would imply that Stahn and others are correct in asserting that there is no hard line between war and peace. However, it does not necessarily follow that a state ought to be *obligated* to attempt to create a lasting peace by seizing the commanding heights and re-engineering a society. This point will be expanded upon further but what is important to note is that *jus post bellum* proponents have correctly discerned a problem with past conceptions of a clear split between war and peace. They have extrapolated from this fact incorrectly.

Jus Post Bellum is aimed at addressing broad concepts of conflict termination, peace-making, and the post-war peace.¹¹ When conflict actually ends can be hard to discern and often extremist factions from the losing side will not abide by peace treaties signed by leaders they recently followed. However, assuming that hostilities have ended, Rebecca Johnson correctly argues that “all become noncombatants and have (or ought to have) their peace-time right to life restored.”¹² This is an uncontroversial statement but most proponents of justice after war go further arguing that more than the simple restoration of the basic human right to life is necessary.

Justice after war, according to proponents, has to produce a higher level of human rights protections than existed *prior to war*.¹³ The proponents of a better post-war human rights standard do not even engage in the debate between economic and social rights and western notions of individual human rights. Despite that fact that two separate United Nations (UN) protocols deal with each of these types of rights separately, proponents of justice after war clamor only for individual civil and political human rights.¹⁴ They blithely ignore not only any local cultural context that might exist but also any reference to non-western notions of human rights. Ironically, their arguments fly in the face of the UN covenant on civil and political rights which begins in part 1, article 1, section 1 by stating “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Apparently, since a conflict ensued, this right to self-determination no longer applies. There is another insidious assumption with the justice after war movement, namely that the victor will be just. Once a standard of post-war reconstruction of society is engendered, there will be no way to stop an unjust but more powerful society from appealing to it and using it. Justice after war

proponents will argue this does not apply to their abstract philosophical claims, but once philosophy is applied to the real world it will become a very real concern.

Imposing Democracy as Well as Human Rights

Most arguments for *Jus Post Bellum* go further than simply arguing for an imposition of western civil and political human rights. There is also a call for transforming the conquered nation into a western-style democratic republic. Inger Osgterdahl and Esther van Zadel argue that the only goal of any military intervention should be to leave the state in which an individual state or coalition of forces has invaded in “a higher level of human rights protection, accountability, and good governance [sic].”¹⁵

Similarly, Rebecca Johnson argues that the occupier must create a “durable peace” in which the defeated state can maintain human rights standards, many argue better rights standards, independently from outside aid or intervention.¹⁶ Orend echoes this sentiment, forcefully arguing that one the main goals of *jus post bellum* is “coercive rehabilitation of a defeated aggressor” in the form of regime change.¹⁷ Orend briefly seems to flirt with the complex reality of socially constructed communities when he notes that the goal should not be to strive for perfect democratic governance but instead what he calls a “minimally just political community.” Unfortunately, Orend defines a “minimally just political community” as one that would avoid violating the rights of other such communities. This amounts to the new community refraining from warfare or other invasive interventions in like communities, to gain and keep international recognition as a just community and to fully realize the rights of all its citizens.¹⁸ Far from being a minimal standard, this is actually an exceedingly high standard that few, if any, states have achieved. This again speaks to the unrealistic and mono-solutional aspects inherent in arguments laid out by *jus post bellum* advocates. States in the world containing myriad complex cultures, peoples, terrain, and levels of economic development are unlikely to willingly acquiesce to a foreign invader even after being defeated. Further, there is no evidence that complex problems are often or even ever successfully dealt with by applying the same solution to every situation. In fact, attempting to force western-style democracy and human rights standards on non-western states and peoples could bring about a state of lasting conflict. But even Michael Walzer would lead us down a far more interventionist path. He argued in his seminal work, *Just and Un-Just Wars*, that any state that has the ability to stop a mass atrocity or genocide has a right to do so.¹⁹ When this is taken even more forcefully to the modern limits of the responsibility to protect argument, right turns into duty and any known mass atrocity must be stopped by outside states with the might to do so. If the logic presented so far is followed through to its natural conclusion, then the United States would be bound to intervene in dozens of developing states and force lasting democratic and human rights changes on these peoples whether the local people wanted them or not.

Some scholars on *jus post bellum* do not subscribe to the post-war intervention outlined above and should be mentioned here. Doug McCready correctly notes that democratic governance is the most desirable end-state but that it may not be achievable in many countries currently. He even argues that forcing democracy on a state could be detrimental to long-term peace and stability. Unfortunately, while he admits that forcing democracy on a

system might not work, he still contends that the post-war peace must bring about a “more just society” than existed prior to the war.²⁰

Eric De Brabandere is one of the only scholars to acknowledge there can be different reasons and goals for military intervention. He argues that not all intervention implies a post-conflict responsibility. He notes that a war of self-defense not only does not imply a post-war reconstruction responsibility, but the whole notion in this situation becomes incomprehensible.²¹ Brabandere is one of the few post-war scholars who acknowledges at least some level of complexity in warfare.

Punitive military actions also come to mind as a form of warfare between states that may not imply a post-war responsibility. Since the goal of the punitive military action is to punish the other state, rebuilding that state seems contradictory. Also, the punitive strike can have a particular military capability as its target and once this capability is destroyed, there is often little reason to attempt to occupy or to continue occupation.

Cyber warfare, too, seems problematic under this current conception. For example, should the western nations responsible for the Stuxnet cyberattack have occupied Iran and forced democratic and human rights reforms? This seems ludicrous but under the current majority scholarly opinion it is not outside the bounds of responsibility.

Even if one leaves the concerns of varying forms of warfare out of the debate, the complexity of warfare and the social systems that engage in warfare make the strong claims of *jus post bellum* proponents fall apart. In order to exemplify this, we will briefly examine the US-led United Nations intervention in Somalia.

Somalia and *Jus Post Bellum*.

One of the most egregious assumptions of *jus post bellum* proponents is that nation building is easy and that it is appropriate for every post-conflict situation. This false assumption mirrors what one finds in the responsibility to protect camp.²² The recent history of armed nation-building has shown that it can sow as much disruption and violence as the actual military intervention itself. In some cases, especially in peacekeeping and humanitarian military intervention, forcing democracy and western human rights standards on the fragile state system can cause more lasting violence than the military intervention. Somalia is a good example of this worst case scenario and a clear indication of what is likely to happen post-conflict if *jus post bellum* adherents begin to have a larger influence on US foreign policy.

Somalia has had a short but very turbulent post-colonial history. Suffering a long dictatorship under Siad Barre from 1969 to 1991, which did little to increase the economic prosperity of Somalia, the underlying clan hatreds were ready to boil over almost immediately after his ouster.²³ The level of deterioration of Somalia by 1992 caused many to label Somalia as the world’s first modern failed state. The economic privation, coupled with a drought caused malnourishment and starvation, became widespread in Somalia.

US President George H. W. Bush was moved by the calamity in Somalia and authorized US forces to intervene and distribute much needed food aid into a violent and chaotic situation on the ground. The United States eventually sent 28,000 troops to lead a multinational

coalition called Operation Restore Hope.²⁴ The 1992-93 US-led Somalia mission began as a food aid, humanitarian assistance mission in August 1992 and transformed into a large multinational military mission by December 1992.²⁵ Even though the commitment to humanitarian aid expanded over time, the result was largely successful as normalcy began to return to Somalia and the starvation ended.

Besides starvation being alleviated, a multipronged internal conflict had been raging which also began to subside at around the same time that the food crisis was ending. In the Somali capital, Mogadishu, one particularly brutal warlord, Mohamed Farrah Aidid, had gained primacy and the people of Somalia were slowly beginning to recognize Aidid as a national political leader. In the United States, President Bush was leaving office and his successor, President Bill Clinton, wanted to enact what amounted to *jus post bellum*. Even though the term had not been coined in 1993, the actions of the Clinton administration and the US-led nation-building mission UN Operations in Somalia II (UNOSOM II) mirrored exactly what proponents of justice after war have advocated.²⁶

Despite wanting to rebuild and democratize Somalia, President Clinton desired some political cover in his first major foreign policy foray after having taking office. Control of the mission transitioned to the United Nations. UNSC Resolution 814 dealing with this change in mission was unanimously passed and UN Operations in Somalia II (UNOSOM II) commenced. Chapter VII of the UN Charter was invoked to continue the foreign military occupation and the violation of Somali sovereignty was justified given massive human rights abuses and a total breakdown of national governance. This is exactly the situation and response that justice after war proponents clamor for.

UN Resolution 814 was a unique watershed resolution, declaring that the instability and human rights abuses in Somalia were a threat to international security. Resolution 814 was also unique in tasking a peacekeeping/peacemaking mission with broad economic, social, and political goals. Resolution 814 was a nation-building mandate in Somalia but President Clinton felt that the warlords had to be kept from fighting first. Ironically, President Clinton also desired cutting the number of US forces in Somalia and ended up leaving a little more than ten percent of the original 25,000 US troops in place for the post-conflict nation-building and disarmament phase of the operation.²⁷

Unfortunately, the post-conflict, nation-building phase soon erupted into violence. One of the main reasons US and coalition troops under the UN mandate were attacked was that President Clinton and the United Nations refused to allow Aidid to participate in the nation-building effort. Since Aidid's recent military and political gains were tenuous, he saw this slight as a direct threat to his aspirations of becoming the Somali president.²⁸ Aidid began to portray the UN troops, especially the US Soldiers, as colonizers. He was able to convince his supporters to violently resist the UN occupation. The ironic thing about these events is that President Clinton and the United Nations did exactly what *jus post bellum* argued must occur post-conflict. The UN coalition attempted to reform the economy, democratize the Somali state, and at least refused to acknowledge leaders like Aidid because of their wartime human rights abuses. If anything, justice after war proponents would argue that Aidid should have been hunted down and tried for his crimes immediately.

After an attack orchestrated by Aidid, which resulted in the deaths of four US Army military policemen, Clinton decided to increase the effort to capture or kill Aidid. But CENTCOM General Joseph P. Hoar worried that the odds of capturing and killing Aidid were low and that his capture would only result in another brutal warlord filling the void Aidid left behind.

President Clinton ordered in a Special Operation Force (SOF) consisting of Delta Force commandos, a helicopter detachment, and Army Rangers to capture or kill Aidid. Nation-building had turned into offensive operations against Aidid and his militia. Aidid continued to ramp up the pressure on the UN mission and the United States leadership through indirectly attacking affiliated peacekeepers.²⁹

Aidid continued to fight the UN forces. In one particularly heinous attack, 24 Pakistani peacekeepers were killed at two separate aid locations on the same day by a mob of Aidid's supporters. The United Nations and President Clinton were shocked at this attack, for UN peacekeepers had been considered off limits from direct attack while on peacekeeping missions. Clinton ordered the Special Forces in Somalia to ramp up their attempts to capture or kill Aidid.

Aidid and his military advisors correctly identified the Black Hawk helicopters as a key vulnerability in US missions. Not only were Black Hawks lightly armored, the US military was flying them low, near building rooftops, and allowing them to linger there to provide supporting fire. Aidid thought that he could bring one down and that US forces would rush in to aid their fallen comrades. Aidid then planned to shoot at US forces from above creating enough casualties that the United States would consider leaving. Aidid's forces experienced monumental success on 3 October 1993 which resulted in two downed Black Hawks and firefight with US forces that lasted almost two days.

In the end, 18 US soldiers were dead and dozens wounded. Hundreds of Aidid's forces were killed and over one thousand more wounded. After the attack, Aidid ordered his supporters to drag dead US soldiers in front of CNN news cameras in an attempt to shock the American public and American leaders into withdrawal. This media operation worked and President Clinton ordered the immediate withdrawal of all remaining US forces.³⁰ A token UN peacekeeping force would remain until 1996 and even though Aidid won the day, Somalia has never recovered and remains an example of a failed and fractured state. The application of *jus post bellum* tenets actually made things worse in Somalia.

Conclusion

Most *jus post bellum* advocates argue for occupying military forces imposing a western human rights standard, economic growth, and western-style democratic republic. Despite any cultural, economic, historical, or other pre-existing conditions within the occupied state, justice after war adherents believe that all post-war situations can be dealt with the same way. Not only does this prescription fly in the face of the complexity of social systems, it denies the recent history of armed nation-building. Somalia serves as a case in point of what can happen when the current incantation of *jus post bellum* is forcefully applied. Somalia also shows that what happens post-conflict can actually trigger more violence if

improperly handled. By refusing to deal with the next most likely political leader, no matter how distasteful, the UN mission was doomed to fail. The United States and United Nations could have left Somalia after the starvation was alleviated without enraging local leaders but that violates everything currently argued in *jus post bellum*.

For the reasons outlined above, *jus post bellum* is itself unjust. By forcing a single solution on all complex post-war situations, the risk of the post-conflict phase going horribly wrong is extremely high. This means that adhering to the *jus in bello* tenet of “reasonable chance of success” becomes an almost impossible expectation prior to almost any military conflict. Further, restructuring an entire state’s society regardless of the people’s wishes hardly seems proportional in every case of military intervention. Therefore, *jus post bellum* violates the *jus in bello* tenet of proportionality of response.

Beyond this, *jus in bello* assumes there is a silver bullet solution which will create lasting peace within every state. It is a denial of complexity that is hard to comprehend. Often there are no “good guys,” those who have not violated human rights by western standards, after a protracted internal conflict. Still, justice after war is unmoved by the reality of the complexity of modern conflict and the diversity in world cultures.

Notes

1. Dan G. Cox, "The Age of Liberal Imperialism: Twenty-Five Years of a Flawed US Foreign Policy," *Orbis* 57, no. 4 (Autumn 2013), 643-52.

2. See for example, Carsten Stahn, "*Jus Post Bellum*: Mapping the Disciplines," *American University Law Review*, vol. 23, no. 2 (2007), 311-46; Robert R. Williams and Dan Caldwell, "*Jus Post Bellum*: Just War Theory and the Principles of Just Peace," *International Studies Perspectives*, no. 7 (2006), 309-20; and Kristen E. Boon, "Obligations of the New Occupier: The Contours of *Jus Post Bellum*," *Loyola of Los Angeles International Comparative Law Review*, vol. 31, no. 57 (2009), 57-84.

3. Stahn, *Jus Post Bellum*, 313.

4. Stahn, *Jus Post Bellum*, 313.

5. Hugo Grotius, *The Rights of War and Peace*, Richard Tucker, editor (Indianapolis, Indiana: Liberty Fund Publishers, 2005), 154.

6. Brian Orend, "*Jus Post Bellum*: The Perspective of a Just-War Theorist," *Leiden Journal of International Law*, vol. 20 (2007), 575.

7. Orend, *Jus Post Bellum*, 575.

8. Stahn, *Jus Post Bellum*, 318.

9. See for example Annalisa Keoman, "A Realistic and Effective Constraint on the Resort to Force? Pre-Commitment to the *Jus in Bello* and *Jus Post Bellum* as Part of the Criterion of Right Intention," *Journal of Military Ethics* 6, no. 3 (2007), 199-200 for an argument of pre-commitment constraining war making abilities of the state; and Orend, *Jus Post Bellum* for a broader explanation of the alleged legal constraints of war between states.

10. Everett Dolman, *Pure Strategy: Power and Principal in the Space and Information Age* (London, UK: Routledge, 2004), 4.

11. See Orend, *Jus Post Bellum*, and Stahn, *Jus Post Bellum*.

12. Rebecca Johnson, "*Jus Post Bellum* and Counterinsurgency," *Journal of Military Ethics* 7, no. 3 (2008), 219.

13. Inger Osterdahl and Esther van Zadel, "What Will *Jus Post Bellum* Mean? Of New Wine and Old Bottles," *Journal of Conflict and Security Law* 1, no. 0 (2009), 5; Johnson, "*Jus Post Bellum* and Counterinsurgency," 220; Orend, *Jus Post Bellum*, 581; and Doug McCready, "Ending the War Right: *Jus Post Bellum* and the Just War Tradition," *Journal of Military Ethics* 8, no. 1 (2009), 73, although it should be noted that McCready is arguing broadly for a more "just society."

14. See the International Covenant on Economic, Social, and Cultural Rights. Adopted by the General Assembly of the United Nations on 16 December 1966 and the International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966.

15. Osterdahl and van Zadel, "What Will *Jus Post Bellum* Mean? Of New Wine in Old Bottles," 5.

16. Johnson, *Jus Post Bellum*, 220.

17. Orend, *Jus Post Bellum*, 581.

18. Orend, *Jus Post Bellum*, 582.

19. Michael Walzer, *Just and Un-Just Wars*, 4th edition (New York: Basic Books, 2006).

20. McCready, "Ending the War Right," 73.

21. Eric De Bradandere, "The Responsibility for Post-Conflict Reforms: A Critical Assessment of *Jus Post Bellum* as a Legal Concept," *Vanderbilt Journal of Transnational Law* 43, no. 119 (2009), 134.

22. See for example arguments made by Responsibility to Protect proponents in Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, DC: Brookings Institution, 2008) and Sarah Sewell, Dwight Raymond, and Sally Chin, *Mass Atrocity Response Operations: A Military Planning Handbook* (Harvard, MA: Harvard Kennedy School Publishers, 2010).
23. Martin Meredith, *The Fate of Africa: A History of the Continent Since Independence* (New York: PublicAffairs, 2011).
24. Robert F. Bauman and Lawrence A. Yates, “My Clan Against the World:” *US and Coalition Forces in Somalia 1992-1994* (Fort Leavenworth, KS: Combat Studies Institute, 2004), 25.
25. Preface to Walter Clark and Jeffrey Herbst, eds., *Learning From Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder, CO: Westview Press, 1997), vii.
26. Richard W. Stewart, *United States in Somalia, 1992-1994* (Washington, DC: Center for Military History, 2002).
27. Kenneth R. Rutherford, *Humanitarianism Under Fire: The US Intervention in Somalia* (Sterling, VA: Kumarian Press, 2008).
28. Ken Menkhaus, *Somalia: State Collapse and the Threat of Terrorism* (New York: Oxford University Press, 1988), 29-30.
29. Stewart, *United States Army in Somalia 1992-1994*, 8.
30. Baumann and Yates, *My Clan Against the World*, 2004.

Chapter 5

Veteran's Administration: Can it Provide What the Nation Needs it to Provide?

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In light of the most recent scandals involving the Veteran's Administration (VA), this paper will explore the implied, legal, moral, and ethical foundations of benefits to military veterans of the United States. Benefits are afforded both military retirees and veterans. Both of these groups are authorized extensive medical and economic benefits. For the purposes of this paper, only the medical benefits and current difficulties associated with administering those services (by the Veterans Administration) will be analyzed. From 2004 to 2009, the VA medical care system and associated research program budget grew at a rate exceeding 9 percent annually. The Veterans Administration estimates that it will provide health care for little or no charge to more than 6.5 million veterans as of 1 October 2013. Despite this level of funding, recent events raise the question: Can the VA continue to run the largest connected medical health care system in the US? This system requires vast resources including fiscal budgets that have increased significantly over the past seventy years. In FY1940, the budget authority for veterans' benefits and services was \$561.1 million, by FY2012 the budget authority was \$125.3 billion, or more than 200 times that of FY1940. In constant 2011 dollars, the FY2012 budget authority is 14 times the FY1940 level. Over the past 13 years, millions of veterans were added to the medical benefit rolls. Based on current literature and ongoing VA and Congressional investigations, this paper will examine the question of whether veterans, as well as the taxpayers who fund these programs, are being fairly and adequately serviced by the Veterans Administration. Outcomes from this analysis include a better understanding of the relationship between military service and citizenship especially during this extended time of an all-volunteer military force.

Introduction

Everyone has the right to seek or obtain health care. "War creates a small class of conspicuous and horribly suffering individuals but one which is by no means unique."¹ This class is no different than those injured in accidents except that they happened in the defense of their nation. However, Henry Dunant, founder of the International Committee of the Red Cross, stated in 1862 that there is a "special obligation" for a soldier who receives a bullet in defense of his country.² Since the nineteenth century the state provided veterans benefits including medical care based upon their service.³ The United States is unique in a number of ways in caring for veterans. The United States developed and sustains a "comprehensive health care system for a very small segment of its population."⁴ This military

health care in the United States is sole system in any industrialized nation to implement this type of system for veterans.

The precursors to the benefits currently provided to veterans in the United States were in place before there was a United States. The answer to what they would be, who would receive them, and how their provision would be governed evolved along with the nation. Many of the challenges concerning the effectiveness and efficiency of the Veterans Administration in providing these benefits, especially medical benefits, can be traced to the social models under which assistance is provided. After this examination of social models we will describe what model is being used in the United States and whether or not it will satisfy the current and future requirements for medical benefits provided by VA to veterans into the 21st century.

The current program of benefits available to our veterans evolved from differing models of government provided benefits. It served as a foundational model for the development of other government benefit programs, such as Social Security and Medicare. The philosophy guiding the provision of these programs has also developed as the nation has grown, gradually changing from a paternalistic, *ad hoc* provision of gratuities to one with more formal, legalistic foundations. The result is a program that in many ways is the most generous in the world, yet is still a source of controversy.

Veterans Benefits Models

Providing for veterans is a national benefit that varies from nation state to nation state. During President Lincoln's Second Inaugural Address he stated "To care for him who shall have borne the battle, and for his widow, and his orphan" – by serving and honoring the men and women who are America's Veterans.⁵ There are approximately 23 million American military veterans.⁶ The Department of Veterans Affairs administers a host of benefits to veterans including education, disability, and medical. The VA sustains the largest health care system in the United States. A total of 6.4 million unique patients and \$55.5 billion was spent on medical benefits in FY 2013.⁷ This is not a small enterprise and it is one that deserves study and analysis in regards to why so much time, money, and effort is expended on such a small percentage of our population.

Over our nations' history, benefits for veterans were "tied to the existence of governments for large societies. At their core such benefits are utilitarian."⁸ In classic utilitarianism one may join the military and serve because society's needs are greater than your own.⁹ This model bases the fact that individuals have helped the nation and providing benefits for those who helped in the security and existence of the state is just, right, and correct. The veterans' benefits are hard to place within a total utilitarian context since many of the promises made early in our nation's existence were not kept. The United States did develop as a nation a "new relationship between citizens and government, but that did not immediately translate into a new theory of veterans' benefits."¹⁰ Table 1 displays the moral and theoretical construct of the utilitarian model as compared to the obligation, programs, decision, benefits, and procedures for veterans' benefits.

Within the confines of examining veterans' benefits as a social contract, one must understand the fundamental framework. The social construct model states that some sort of agreement exists between the state and the society. The Hobbes' theory is that "relations of contract, which obtain in and constitute the state of society."¹¹ Every man is supposed to contract with his fellow man to establish a sovereign state. They also contract with the government. In this manner the people obey the government but the government protects the rights of the people. This is a two-way contract and both sides have obligations to the other. Rousseau stated "all the obligations which a citizen owes to the State he must fulfill as soon as the sovereign asks for them, but the sovereign in turn cannot impose any obligation on subjects which is not of use to the community."¹² Therefore if the veteran is called upon through a draft or volunteers for military service, the veterans' benefits afforded to them could be viewed as a social contract for services rendered.

Finally, in his article "Of Two Minds: Charitable and Social Insurance Models in the Veterans' Benefits System," Richard E. Levy describes the two models under which government provides benefits in general, and veterans benefits specifically have historically been provided. He describes them as the charity model and the social insurance model.

The charity model was the method used to determine and grant veterans benefits from their inception in the young colonies. This held true as they experienced their first expansion in the 19th century. Under this model, benefits were viewed as "gratuities," or voluntary assistance extended to the veteran by the government as a moral rather than a legal obligation. As such, no legal entitlement was extended to the veteran; the scope and circumstances were determined by the government. There were no adversarial procedures available if the veteran disagreed with the governments' assessment of the benefit to be extended or his qualification to receive it. In fact, such procedures were seen as undesirable, since it was assumed the government had the veterans' best interests at heart. Historically, this is the model which has prevailed when extending benefits to veterans.

This relationship of the veteran and the benefits offered by the US Government was summarized by the Supreme Court in *Lynch vs. United States* in 1934. Judge Brandeis wrote "[p]ensions, compensation allowances and privileges are gratuities...[that] create no vested rights and may be redistributed or withdrawn at any time in the discretion of Congress."¹³ The charity model views all benefits as gratuities, and makes several assumptions. Adversarial procedures are not necessary since the government is assumed to be acting in the best interests of the veteran. Indeed, they are counter-productive to the veterans' best interests. As benefits are discretionary, and voluntarily provided, the veteran has no rights to be protected, and therefore no legal or independent adjudication is needed. They can be withdrawn or denied at the discretion of the government or agency overseeing them.

The social insurance model by contrast is a much younger construct. Its impetus was the Great Depression. The economic and social disruption occurring then drove a new attitude toward government provision of economic support. The government was now seen as having a role to assist the old, infirm, unemployed, and families with children. The Social Security Act of 1933 established the first major federal benefit program since veterans' programs were founded.

All of these theoretical models provide a basis for determining and understanding the reasons for the unique medical benefits provided to United States veterans. It also gives a framework to understand the current immense amount of resources devoted to the small percentage of our population. The current VA benefits system is a hybrid of these models.

	Moral			
	Theoretical			
Model	<i>Utilitarianism</i> ¹⁴	<i>Social Contract</i> ¹⁵	<i>Social Insurance</i> ¹⁶	<i>Charity</i> ¹⁷
Obligation	Good only if no other use found	Moral	Quasi-contractual	Moral
Programs	Those deemed beneficial	What is necessary	Comprehensive	Ad Hoc
Decisions	Guided by rules of thumb	Contractual	Legal standards	Adversarial vs. charity
Benefits	Provided	For greater good	Entitlements	Mere gratuities
Procedures	Either/or	Processes established	Due process	Non-adversarial

Table 1. Moral and theoretical construct of veterans and society. Created by author.

Moral and Theoretical Construct

Based upon the earlier historical accounts, society provides for veterans and their dependents. This is based upon a number of ethical and moral imperatives.

The axiology or goodness of models is aligned with recognized moral and theoretical constructs of veterans and how society takes care of them. Historical instances are provided for context and four different theoretical paradigms are provided for determining the values given to each of these models. Each society provides differently for their veterans. However, most societies understand the benefits of freedom and nation state survival that veterans provide their citizens. Based upon that understanding, veterans are provided a number of benefits, including medical services. Those can be categorized into various, well-documented theoretical models. In Table 1 the construct of benefits afforded veterans is based upon moral and theoretical underpinnings if provided. Notations of each of these are provided to enhance and demonstrate the context of this relationship between society and veterans.

Major differences were evident in the social insurance model. Most importantly, legal standards for eligibility were now delineated, and benefits took on the attributes and protections of property. Acceptance of these benefits under the social insurance model as property rather than gratuities was established in 1970 by the Supreme Court in *Goldberg vs Kelley*. It determined that welfare benefits could only be denied or withdrawn after due process, which would include adversarial procedures and independent adjudication. While this did not require that an actual trial be held, it was a much more formal process based on legal procedures, rather than the responsible agency exercising discretionary judgment.¹⁸

Evolution of Veterans Benefits

To understand the context of the four identified ethical models, the historical context of veterans' benefits must be recognized. As with any US government program, the legal foundation of veterans' programs is based on the US Constitution. Article 1, Section 8, clause 14 of the Constitution grants Congress the power "To make Rules for the Government and Regulation of the land and naval Forces." From that seemingly straight-forward assertion, the United States has developed today's program of veterans' benefits. This program is one of the most extensive offered by any nation. That has not kept it from being a subject of intense scrutiny and debate, as the legal, moral, and ethical foundations of what a nation owes to its' veterans has been explored for over 200 years by its' citizens, government, and veterans alike.

Our obligation to veterans has been recognized since before the American Revolution. From the beginning, this has been expressed as an obligation to provide a pension to veterans wounded in service. This historical context is important when describing and determining how veterans' benefits came into existence.¹⁹ There was a also recognition that either medical or what is today called "assisted living" care should be extended to those who serve honorably and were rendered unable to provide for themselves after returning to the civilian world. The extension of benefits was also made to dependents of veterans from the beginning of our nation.

Pensions were the first benefit extended to those who provided military service. The first provision of a pension of any type was that extended in 1636 by the Plymouth Colony to those colonists wounded in the defense of their fellows against Indian tribes.²⁰ Congress authorized pensions during the Revolution. The motive was to increase recruitment and retention. States were expected to make actual payment of the pensions granted.

During and after the Revolutionary War three principal types of pensions were provided by the US Government for servicemen and their dependents: "Disability" or "invalid pensions" were awarded to servicemen for physical disabilities incurred in the line of duty; "service pensions," to veterans who served for specified periods of time; and "widows' pensions," to women whose husbands had been killed in the war or were veterans who had served for specified periods of time.²¹ In 1776, the Continental Congress passed a pension law which promised half pay for those veterans who suffered the loss of a limb or other serious injury. It was intended that the pension would be for the duration of the disability.²² In 1789, Congress took responsibility for pensions previously paid by the states (1 Stat. 95). Recognition of federal responsibility for those who served with state forces, either as militia or State troops, was made when such veterans were declared eligible for federal pensions in 1806 (2 Stat 376). On 29 September 1789 (1 Stat. 95), the First Congress of the United States passed an act which provided that invalid pensions previously paid by the States, pursuant to resolutions of the Continental Congress, should be continued and paid for one year by the newly established Federal Government. Subsequent legislation often extended the time limit. An act of Congress approved 23 March 1792 (1 Stat. 243), permitted veterans not already receiving invalid pensions under resolutions of the Continental Congress to apply for them directly to the Federal Government. On 10 April

1806 (2 Stat. 376), the scope of earlier invalid-pension laws pertaining to Revolutionary War servicemen was extended to make veterans of State troops and militia service eligible for Federal pensions. The act superseded all previous Revolutionary War invalid-pension legislation.

Before 1818 national pension laws concerning veterans of the Revolution (with the exception of the Continental Congress resolution of 15 May 1778, granting half pay to officers for service alone) specified disability or death of a serviceman as the basis for a pension award. Not until 18 March 1818 (3 Stat. 410), did the US Congress grant pensions to Revolutionary War veterans for service from which no disabilities resulted. Officers and enlisted men in need of assistance were eligible under the terms of the 1818 act if they had served in a Continental military organization or in the US naval service (including the Marines) for nine months or until the end of the war. Pensions granted under this act were to continue for life.²³

The service-pension act of 1818 resulted in a great number of applications, many of which were approved. Congress had to appropriate greater sums than ever before for Revolutionary War pension payments. Financial difficulties and charges that applicants were feigning poverty to obtain benefits under the terms of the act caused Congress to enact remedial legislation on 1 May 1820 (3 Stat. 569). The new law required every pensioner receiving payments under the 1818 act, and every would-be pensioner, to submit a certified schedule of his estate and income to the Secretary of War. The Secretary was authorized to remove from the pension list the names of those persons who, in his opinion, were not in need of assistance.

Within a few years the total of Revolutionary War service pensioners was reduced by several thousand. An act of Congress approved 1 March 1823 (3 Stat. 782), resulted in the restoration of pensions to many whose names had been removed under the terms of the 1820 legislation, but who subsequently proved their need for aid.²⁴

Congress passed another service-pension act on 15 May 1823 (4 Stat. 269), which granted full pay for life to surviving officers and enlisted men of the Revolutionary War who were eligible for benefits under the terms of the Continental Congress resolution of 15 May 1778, as amended. The last and most liberal of the service-pension acts benefiting Revolutionary War veterans was passed on 7 June 1832 (4 Stat. 529), and extended to more persons the provisions of the law of 15 May 1828. The act provided that every officer or enlisted man who had served at least two years in the Continental Line or State troops, volunteers or militia, was eligible for a pension of full pay for life. Naval and marine officers and enlisted men were also included. Veterans who had served less than two years, but not less than 6 months, were eligible for pensions of less than full pay. Neither the act of 1832 nor the one of 1828 required applicants to demonstrate need. Under the act of 1832 money due from the last payment until the date of death of a pensioner could be collected by his widow or by his children.²⁵

As the veteran population has grown, the scope of veterans' benefits has grown in scope as well as volume, expanding beyond pensions into health, education, and vocational training. From over 200,000 veterans created during the Revolution, the veteran population

increased to approximately 2,000,000 after the Civil War. During this period, the bulk of veterans benefits consisted of pensions, and the charity model was followed in their provision and administration.

After World War I the United States had a population of about 100 million and 4.7 million veterans.²⁶ Along with this fact was that the Civil War veteran's benefits created a massive burden on the nation's fiscal system. During the late nineteenth century this burden amounted to thirty to forty percent of the federal budget.²⁷

The War Risk Insurance Act of 1917 authorized courses for rehabilitation and vocational training, as well as the establishment of the Federal Board for Vocational Training. In 1921 Congress consolidated six major veterans' program management offices down to three, the new Veterans Bureau, the Bureau of Pensions of the Interior and the National Home for Disabled Volunteer Soldiers. It wasn't until 1930 that a single agency, the Veterans Administration was established to oversee all veterans programs. The first detailed standards and administrative review processes came in 1933 along with the establishment of the Board of Veterans Appeals. However, Congress exempted BVA decisions from judicial review, retaining characteristics of the charity model.²⁸

Since World War II, over 30 million veterans have served the US, with almost 17 million war veterans still living.²⁹ Including periods of war and peace, there are over 23 million currently living veterans. With this growth in veteran population, there has been an increase in the scope of veterans' benefits and a trend toward the social insurance model in providing them. Even as the size of the Veterans Administration bureaucracy itself grew, the charity model of internal, non-adversarial review of decisions remained dominant. Some elements of the social insurance model were included in the Veterans Judicial Review Act of 1988, which allowed some judicial review.³⁰ However, primary responsibility for review resides in the Court of Appeals for Veterans Claims, an Article I court with much less judicial independence and more agency control than other federal courts.

Veterans Administration Today

The medical benefits afforded US veterans are some of the most comprehensive in the world. In fact there is no French, British, German, Canadian, or Dutch equivalent to the VA hospital system.³¹ No other member of the United States was afforded the medical benefits that veterans were provided prior to the Great Society of the 1960s through Medicare and Medicaid.

Previously this paper described the theoretical models that provided these benefits to our veterans. Recently administration of the medical benefits have come into question.

President Barack Obama proposed a \$153 billion Veterans Affairs Department budget for FY 2014. This is a 10.2 percent increase over 2013 funding. The medical care budget request is for \$54.6 billion.³² Based upon reflection of the ethical theoretical models described earlier and historical events detailed, what is the United States construct for current medical benefits? Also, can this construct continue to service the needs of veterans into the 21st century?

Before answering these questions the current health care offerings to United States veterans must be reviewed. They are less than acceptable in a number of areas. Policy changes can take place but a cultural transformations may be necessary to adequately accommodate current and future medical benefits for veterans. The rapidly expanding budget supporting VA medical benefits does not seem to be conducive to meeting the demands of this unique population. Based on recent news reports and Inspector General Inspections of VA medical facilities care through the VA suffered in a number of less than suitable ratings and excessive wait times for veterans to be seen for medical appointments. Problems and issues have fomented for the past at least two decades. The one highlight is that the American public is cognizant of the challenges veterans face and have supported and even demanded changes to improve VA healthcare.

Priority	Category
P1	Veterans with service-connected disabilities (SCDs) of 50 percent or more or veterans deemed to be unemployable based upon SCDs
P2	Veterans with SCDs rated 30 percent or 40 percent
P3	Veterans who are former prisoners of war; were awarded the Purple Heart; were discharged because of SCDs; have SCDs rated 10 or 20 percent; or were disabled as a result of treatment or vocational rehabilitation.
P4	Veterans receiving aid or are housebound and veterans whom VA determined to be catastrophically disabled as a result of a non-service-connected illness or injury.
P5	Veterans who do not have SCDs or who have noncompensable SCDs rated zero percent and annual income and net worth below national means-test thresholds, veterans who are receiving VA pension benefits, and veterans who are eligible for Medicaid benefits.
P6	Veterans seeking care solely for exposure to chemical, nuclear, or biological agents in the line of duty, veterans who have compensable SCDs rated zero percent, and recently discharged combat veterans who are within a five-year period of enhanced eligibility and benefits.
P7	Veterans who have no SCDs, whose annual income or net worth is above the VA means-test thresholds and below the VA national geographic income thresholds, and agree to make copayments.
P8	Veterans who have no SCDs, whose annual income or net worth is above the VA means-test thresholds and the VA national geographic income thresholds, and agree to make copayments.

Table 2. Eligibility and Priority Groups for Veterans' Health Benefits.³⁴ Created by author.

For one to be considered a veteran you must have served in the military force. For one to be cared for by the VA for medical purposes initially one had to have a service-connected injury. Over the history of the United States, veterans were provided medical services after their service. That medical care originally began as service for medical conditions caused or service-connected to military service. Later that definition was expanded in the 1970s to include low-income veterans' health benefits who had no service-connected conditions.³³ These mandates were changed some twenty years later.

In 1996 Public Law 104-262 mandated that the VA deliver medical services to service-connected veterans, those unable to pay for necessary medical care, and provide medical services to specified groups of veterans like World War I and prisoner of war veterans. Also with this law Congress required the VA to develop and implement an enrollment system based upon priorities of these groups.³⁵ A system of eight different priority groups was implemented to service veterans' medical requirements. Table 2 shows and describes the eligibility and priority groups associated with current veterans' health benefits through the Veterans Health Administration (VHA). They also provide ambulatory visits, inpatient service, and prescription medications at no charge to many veterans, including those who are rated above 50 percent with SCDs.³⁶ These priority groups are not the end of new VHA initiatives.

The scandals of 2014 included VA employees misrepresenting their facilities performance to gain bonuses. Administrators in more than 26 VA facilities were found to be manipulating wait lists as to represent that veterans were receiving treatment in a timely manner.³⁷ These included hospitals in Phoenix, Austin, San Antonio, Durham, St. Louis, and Chicago. Specifically, the United States Government Accountability Office found trends of 30-40 percent of specialty appointment consults at various VA medical centers went from 33 to 210 days elapsed between consult request until patient received care.³⁸ Stories of negligence, wait time manipulation, and accusations that veterans died waiting for treatment caused the resignation on 30 May 2014 of General Eric Shinseki, who had served since 2009 as the Secretary of Veteran's Affairs. He was replaced by Secretary Robert McDonald. Secretary McDonald is a former captain in the United States Army and previously served as the CEO of Proctor and Gamble. During August of 2014, the Congress passed the Veterans Access, Choice, and Accountability Act of 2014 (VACAA). This legislation attempted to fix some of the problems of wait time, geographic eligibility, access to non-VA facilities, assisted in making it easier to fire poor performing senior VA managers, and included money to build new VA facilities and hire more VA doctors.³⁹ The \$16.3 billion initiative was a good start in helping fix problems but did not address the future demographics of veterans. The program became operational and almost immediately there were significant issues raised. A VFW report determined through a comprehensive survey (2,511 responses) that veterans were referred to contractors but their records were not always available at the time of the veterans' appointment. More than 90 percent of veterans eligible for the Veterans Choice Program were not given the choice to participate.⁴⁰ After this program became effective the 40 mile factor was recognized as a point of contention. The 40 miles was measured in geodesic dimensions (as the crow flies) versus on the ground distance. Again, this measure was criticized and is still being addressed to allow veterans a ground distance of 40 miles to measure eligibility of medical treatment.

Theoretical Models and Future VA Medical Benefits

Based upon current public perception of veterans, misrepresentation of VA medical facilities care, and attempts to fix those problems we can view the theoretical models discussed previously (See Table 1). With regards to obligation, it seems that based upon historical events, legislation, and current environment that there is a moral obligation to

continue VA medical benefits for veterans just as found under the social contract and charity models. This obligation is supported by the historical evidence, and even today's support of veterans by the general public would suggest that the moral obligation to care for veterans is intact.

With respect to programs the charity *ad hoc* factor still seems the rule rather than the exception. The new VACAA enacted in 2014 to fix many of the noted deficiencies discovered at VA facilities seems to be *ad hoc* at best. The problem with 40 mile geodesic versus ground measurement for eligibility of medical benefits is still another issue based upon seemingly *ad hoc* legislation that does not consider veterans own driving considerations. The public scrutiny that veterans enjoy fuels the continuous status of *ad hoc* in terms of programs with the VA. A comprehensive review and implementation that could be found in the social insurance model or what is necessary by the social contract model is likely not possible.

In 2009 there were 24 million veterans and the VA expects that number to shrink to 16 million by 2029.⁴¹ The constant expansion and expected contraction seems to also feed this *ad hoc* nature of program implementation. With regards to benefits, they are bound in either the utilitarianism or social contract since society still sees veterans as persons who deserve medical benefits of some sort. The question may become, are all veterans allowed access to free or almost free health care as defined by the current eight priority typology enforced by the VA? Finally under current procedures, the non-adversarial factor within the charity model seems to be in conflict with the due process under social insurance. Currently, with the VA scandals of 2014, many promises to speed up disability claims, which are contingent upon health care benefits, continue to be delayed. The backlog goal that VA administrators promised to fully eliminate still seems out of reach. The first-time VA benefits claims unresolved for more than four months is around 245,000 cases. This is reduced down from 160,000 cases in 2014 and more than 250,000 cases since the start of 2013.⁴² The VA completed more than 1.3 million claims in fiscal 2014, which is a new record. However, the workload does not seem to have a near-term drop in numbers. The second part of the benefits procedures is the appeals process with the Board of Veterans Appeals. That backlog is rising steadily with more than 245,000 cases in March 2013 to 287,000 in December 2014.⁴³

More overall claims are processed despite the delays. From 1960 to 2000 8.8 percent of veterans were seeking VA care. During the last 14 years that percentage has reached 19 percent, or more than doubled. Not only have the claims increased but the number of medical issues associated with each claim has increased.⁴⁴ In 2009 the VA processed 989,000 claims with 2.7 million medical issues. Secretary McDonald has stated that in 2017 the VA is projected to process 1.4 million claims with nearly 6 million medical problems.⁴⁵ Thus, younger veterans will have more medical issues that will be treated for even longer periods of time in the future.

The willingness of the public and government to extend medical benefits to veterans has been established throughout the history of the United States. The models chosen to determine those benefits, as well as the organizational efforts to administer them, do not

always meet the moral and ethical expectations of the people or veterans. Despite this fact, VA is continuing to struggle to provide the medical benefits that the nation “needs” it to provide.

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Chapter 6

Ethical Paradox, Cultural Incongruence, and the Need for a Code of Ethics in the US Military

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Competing Values

It worried me that sometimes the system could put us in a position where we don't create and develop officers who are willing to speak the truth and feel the sense of obligation to do it, regardless of the cost, or who won't be respected or admired or rewarded for doing that. I would hope that we would never find ourselves in a position where we would create an atmosphere where our subordinate leaders didn't feel free to speak.

- General Anthony C. Zinni, USMC (Ret.), 2003¹

Personal and professional honor do not require request for reassignment or retirement if civilians order one's service, command, or unit to act in some manner an officer finds distasteful, disastrous, or even immoral. The military's job is to advise and then execute lawful orders . . . If officers at various levels measure policies, decisions, orders, and operations against personal moral and ethical systems, and act thereon, the good order and discipline of the military would collapse.

- Professor Richard H. Kuhn, 2007²

The above two quotes capture the paradoxical nature of the ethical environment within the US Military. That ethical environment presents a conundrum of competing values to the organization – how does the military develop officers who can thrive in situations of a treacherous nature that demands obedience to hierarchical authority, yet requires officers to speak with candor because the costs of not doing so may be catastrophic? Unfortunately, research and recent events suggest that perhaps the military is not doing a good job of developing officers who can successfully balance such paradoxical requirements. Perhaps the kind of organization, where the personal and professional price for candor is too high, as cautioned against by General Zinni when he spoke at the United States Naval Academy in the spring of 2003, is the kind of organization that the military has become.

Most recently, the US Army War College conducted a study that showed rampant lying within the Army, and in another study conducted, it was determined that candor was the missing element of the Army profession.³ On the one hand, there is the military ethical environment of Professor Kuhn, wherein an officer needs to set aside any personal morality and ethic in order to do the bidding of the state, and on the other, there is the environment of General Zinni wherein an officer needs to speak truth to power (presumably based on some ethical or professional premise) regardless of the cost. However, the most effective organization most likely lies somewhere between these two conditions. That is, an organization where moral officers act within a values-based system that allows them to behave

and maintain the moral high ground while supporting the greater objectives of the state. However, circumstances, both past and present, indicate that the military is an organizational culture that could be determined to be ethically ambiguous at best. For example, despite self-aggrandizement about being a values-based organization, consider the lack of candor concerning significant issues from senior military leadership of the ilk described in Lieutenant General McMaster's *Derelection of Duty*, or the accounts of more modern day generals who are afflicted with careerism in Tom Ricks' *The Generals*, or in the 2006 case of the revolt of the retired generals detailed in the pages of *Vanity Fair*; each of these indicative of a military organization that is diminished in core values like integrity, moral courage, and honor.⁴

Consider the following five examples: As a Major, David Petraeus wrote a dissertation that was critical of the US Army's actions during Vietnam and was faced with the dilemma of whether or not to publish it. Previously, Andrew Krepinevich had published a likewise critical dissertation to the derailment of his Army career. Petraeus chose not to meet the same fate as Krepinevich and did not publish his work.⁵ The internet is replete with personal anecdotes from military members who have had to work closely with Afghan officials who keep "Chai Boys," young adolescents who are abused as sex slaves. Officers are required to work with foreign nationals who they know (and can prove) are corrupt and stealing the US taxpayer's dollars for personal gain. General officers, who have spent years in the crucible of military ethics, are criminally prosecuted for sexual harassment, abuse of government funds, or abuse of power on a too often basis. Military officers who speak at professional military education institutions hide behind the veil of non-attribution in order to tell the truth as they see it. Each of the above noted instances are indicative of an organization that suffers from cultural incongruence which results when the espoused values of an organization are not aligned with the values-in-use of an organization. Argyris and Schon state that cultural incongruence will result in dysfunction, frustration, and unethical behavior in an organization.⁶ The 2015 Army War College study stated that "...the first step toward changing this culture of dishonesty is acknowledging organizational and individual fallibilities."⁷ Perhaps the military needs to conduct a self-assessment to determine what its values-in-use are. The thesis of this paper is that the US military, because of a legalistic approach to ethics, has not developed an environment that enables officers to act as moral and ethical warriors *and* follow orders in order to maintain good order and discipline. This has resulted in an officer corps that does not have a definitive ethic beyond a rules-based approach to duty, resulting in less than optimal performance in ethical decision-making. The only way for the military to develop an officer corps that is representative of a values-based professional ethic is to develop a reward system for desired ethical behaviors.

Differential Ethics

An important point of note is that professional ethics codes usually are based upon particulars of the profession. Ethics codes are developed for specific situations within in a profession wherein an ethical dilemma might emerge. In addition, some ethics code will require members to behave in a manner contrary to what might be considered good ethical behavior; this is referred to as "differentiated ethics." An oft cited example of differentiated

ethics is that of priests who cannot report to authorities what they hear inside a confessional, even if a person confesses to concocting a scheme to hurt others. An ethical person hearing the same thing would be expected to report such information to authorities.⁸ In the case of the military, differential ethics manifests in many ways. One way being that killing, which is usually immoral, if done in defense of the state is not illegal under international law. Other examples of this sort of ethical dilemma are outlined in previous paragraphs which demonstrate that doing one's duty overrides any personal ethical dilemmas that may arise, such as being required to conduct business with corrupt leaders, tolerating pedophiles from other cultures, or even compromising personal integrity in order to support the position of superiors.

In the military ethical environment described by Kuhn, the compromise of personal moral beliefs is a requirement for good order and discipline; however, Dr. Snider of the Center for Army Profession and Ethics proposes that an Army leader, (whose every decision and action is closely monitored by followers), who compartmentalizes and ignores personal ethical beliefs in order to meet the requirements of the state will eventually be seen as a leader who lacks integrity and that this will break down trust within the organization.⁹ Through this insight he has captured the essence of Argyris and Schon's theory on cultural incongruence – if an organization and its members espouse one set of values, yet their actions are driven by another set of values, then the result will be detrimental to the organization.¹⁰ Perhaps the answer to this dynamic is for the military to perform a self-assessment and to determine what its values are. This type of self-reflection has been ordered by a Secretary of a Service or the Secretary of Defense every few years (indeed the current Secretary of Defense is considering a complete ethical review in the face of recent transgressions) but it never seems to solve the issue of ethical transgressions.¹¹ It is offered that the US military's primary difficulty with ethics is that its approach to ethics, although espoused as primarily a values-based approach is in reality a legalistic one.

The Current Environment

The current values-based approach most often touted by the military leaders as defining the military ethic applies easily manipulated and nebulously defined values and is an insufficient ethical base for decisions. For example, loyalty can be manipulated and defined as loyalty to your superior, the organization, the constitution, or to your charges. Which one has precedence? Does moral courage mean publishing or drawing attention to a problem even if it might garner disfavor within the organization? The answer to both of these questions is that the answer will be whatever your superior tells you the answer will be. If moral courage is so valued, then why did the 2015 Army War College study find it so deficient? Does integrity mean setting aside every ounce of personal decency in order to conduct operations with officials from another country?

Almost 100 percent of officers surveyed in previous research answered that if an order were legal, despite its questionable moral or ethical component, that it must be followed.¹² This survey result implies that the ethical standard for the military is not values-based (as is most often heard), but is a legalistic ethic.

Does not the Military Already Have a Code of Ethics?

Military members will often point out that the military does have a code of ethics. They will note that the Uniform Code of Military Justice, a legal document, serves that purpose. Others will argue that the service values, Joint Ethics Regulations, assorted creeds, and the code of conduct are more than enough for a code of ethics. However, upon analysis of the aforementioned components, (except for the code of conduct which is written specifically for combat and prisoner of war situations), the others are woefully inadequate as ethical codes. I will address each one in kind.

There is no lack of codes written for Department of Defense employees and military members. The Joint Ethics Regulation is a 200 page legalistic didactic tome that does little to provide employees with specific guidance upon which to base ethical decisions (aside from providing guidelines about limits of gifts, or how to define conflict of interests).¹³ In addition, well-established ethical standards of conduct for DOD employees codified in Executive Order 2731 and 5 Code of Federal Regulations (C.F.R.) Part 2635 stipulate a rules-based ethic for those in government.¹⁴ From that basis, it appears that the moral philosophy utilized within the Department of Defense is a narrow rules-based philosophy that complies with the guiding principles of ethical conduct in the executive order and the ethical standards established in 5 C.F.R. Part 2635, not a virtue or values-based ethical environment.

The Code of Conduct dictates unambiguous behavior in combat and in prisoner of war situations. It is clear in its expectations. For example, Article II states that “I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.”¹⁵ Contrast this clarity with the definition of integrity offered on the official Army website: “Do what is right, legally and morally. Be willing to do what is right even when no one is looking. It is our “moral compass” an inner voice.”¹⁶ The Army never actually defines what a “right” behavior is. The Code of Conduct explicitly tells the reader not to surrender. This ambiguity is endemic to not only the Army values, but the values espoused by all of the services. The navy defines “honor” as:

I will bear true faith and allegiance. . . Accordingly, we will: Conduct ourselves in the highest ethical manner in all relationships with peers, superiors and subordinates; Be honest and truthful in our dealings with each other, and with those outside the Navy; Be willing to make honest recommendations and accept those of junior personnel; Encourage new ideas and deliver the bad news, even when it is unpopular; Abide by an uncompromising code of integrity, taking responsibility for our actions and keeping our word; Fulfill or exceed our legal and ethical responsibilities in our public and personal lives twenty-four hours a day. Illegal or improper behavior or even the appearance of such behavior will not be tolerated. We are accountable for our professional and personal behavior. We will be mindful of the privilege to serve our fellow Americans.¹⁷

This definition of honor, although quite lengthy, has not kept the Navy from relieving 90 commanders for cause during the last five years.¹⁸ Once again, although much more detailed than the Army’s definition of honor (which is “live up to all Army values”), the Navy’s definition is nothing more than aggrandizement of aspirational behavior. For

example, even Admiral Mike Mullen, former Chairman of the Joint Chiefs of Staff, waited until he was a Rear-Admiral before he wrote an article in Proceedings titled “*Cultural Changes: What Stays and What Must Go*” which detailed some very significant problems within the Navy such as abuse of enlisted manpower and the waste of resources.¹⁹ Was the readership to believe that the bevy of ills noted at that time by Admiral Mullen were new to him? Although it is conjecture, it is fair to assume that Admiral Mullen most likely took the path of least resistance and waited to be in a position wherein he was senior enough in rank so that he might not be chastised for such candor.

B.H. Liddell Hart noted this phenomenon in the early twentieth century when he wrote “I found that moral courage was quite as rare in the top levels of the services as among politicians.”²⁰ Likewise, more recently, Paolozzi wrote a monograph entitled “Closing the Candor Chasm: The Missing Element of Army Professionalism.”²¹ Note that he described the lack of candor as a “chasm” denoting the serious predicament which results from not having a definitive ethical code that places honesty and integrity above all else. It is one thing to allude to organizational support of integrity and speaking truth to power, it is quite another to have an ethical code that protects members who act in this manner. The US Military has no such code, and if a military officer wishes to speak with candor, it is done at risk of career.

When faced with the dilemma that service values do not sufficiently comprise an actionable ethics code, the Uniform Code of Military Justice (UCMJ) is usually pointed to as the bedrock for ethical military behavior. After all, the argument is proposed, that a legal code will include or be based upon all of the moral principles of a culture. While this may be true, the widespread aphorism “while it may be legal, that does not make it right,” leaves a lot of room for legal behaviors to become ethically questionable. As an example from another discipline, despite very explicit and robust laws framing business behaviors, most businesses will have a code of ethics to augment legal decision making.

Although the military has a bevy of codes, regulations, values, and orders that could be construed as creating a collective ethical code, the primary problem identified here is that the military, for many sound practical reasons, is legalistic-based in its ethics. The military ethical environment of Professor Kuhn is alive and well in the 21st century Armed Forces. Personal moral and ethical beliefs are indeed non-material in the behavior of military personnel. All espoused values come down to one overall value – follow lawful orders.

The Moral Courage to Solve the Problem

Taking all into account, the primary ethical problem within the military is how does it develop moral and ethical officers who also meet the good order and discipline requirements of an effective military? It is this author’s contention that most senior officer’s ethical failings that are highlighted in the military are associated with the cultural incongruence dynamic detailed in this paper. The organization says that it values a certain type of behavior, but then rewards a paradoxical behavior which develops officers who are never quite sure what it is the organization values (except maybe conformity). For example, a colleague wrote an article critical of an Army program, but was told by the program manager that it would end the officer’s career if it were published. In the aforementioned instance (as in

most examples provided within) it was not the value of integrity that was preeminent, but that of conformity and compliance. The key issue is how does the organization identify officers of strong moral and ethical principle if the values-in-use (and thus the standard with which an officer is judged) are not the same as the espoused values? If further research confirms the findings of the 2015 Army War College study, then the current ethical environment is detrimental to building trust, critical thinking, and adaptive behavior in the organization. If officers spend an entire career in an ethical environment that negates any kind of moralistic or ethical decision making process under the pretext of good order and discipline, then it is no wonder that when they are actually faced with an ethical challenge, their ethical decisions come up short. However, in an ironic twist, in order to solve this problem it would take a morally courageous decision to change the personnel system, which would in turn transform the organizational culture of the military.²²

It is not practical to have an ethical code that works for all instances in the military. The Code of Conduct appears to work because it applies to a very narrow situation. The range of military operations and the subsequent circumstances are so varied that it would be futile to try to develop a code that worked for all of them. What the military needs to do is to carefully screen its personnel for strong ethical and moral characteristics. It appears from a bevy of literature that forthrightness and integrity, moral courage, respect for others, and loyalty to the organization are values that are espoused as being prized in the military.²³

In 2004 at the Joint Leader Development Conference in Washington DC, General Zinni (USMC) stated that the services did not have mechanisms in place to take care of the truly out of the box officer. He lamented that if someone were to behave according to his or her conscience that all it takes is one bad fitness report and that officer's career is most likely ended.²⁴ What I propose is that the services incorporate a way to document the ethical make-up of an officer. This documentation needs to go beyond the standard box checking of the statement "This officer adheres to all service values" or some similar generic assessment which only comes into play after an officer commits a serious transgression and the act of checking a negative box is easy. What is suggested is that the military services provide a detailed assessment of the officer's ethical make-up prompted by statements.

The treatment of officer evaluations is another example of paradoxical and incongruent behavior within the military. There is no more critical task for any of the services than selecting the next generation of leaders. However, in an almost indefensible act, most of the services truncate the evaluation process and reduce it to a process of box checking. Each service has various ways to document sustained superior performance, but none has a robust or detailed evaluation system. There appears to be a belief that qualitative performance can be quantified in a very compact comparative matrix. In a significantly ironic twist, even an officer who has shown sustained superior performance for years might have a career derailed because of an average report, even if that report is average because of a single conflict with a senior.

The US Army, with its incorporation of the Commander 360 and the Multi-Source Assessment Feedback has demonstrated the desire for more detailed information in leader development processes. However, cultural intransigence has stalled the integration of more

detail into the formal officer evaluation process. It is a recommendation that officer evaluations be changed to incorporate conceptually the intent of the 360. For example, if integrity and respect were truly valued, then a part of the officer assessment might look like the following:

- This officer has offered alternatives to my orders within my intent: Often---sometimes---rarely----never. Provide specific examples.
- This officer respects and develops his subordinates: Always----mostly---sometimes----rarely----never. Provide specific examples.

It should not be beyond the scope of an annual review to have 10-15 such statements to answer for the evaluator which would be in direct contrast to the very small amount of space that is currently authorized. The Commander's 360, which is not used in official evaluation, currently has a total of 34 areas for assessment. Once again, the assumption made is that selecting the next generation of leaders is too important to leave to a truncated quantitative system. If the services can qualitatively determine the values that it espouses as most critical, and then can develop an evaluation that details whether an officer holds those behaviors and values, then the organization would be better for it.

Of course, adding a 360 degree type evaluation to the official record would provide added information concerning the moral and ethical make-up of officers. However, in another nod to paradox, if the US military does indeed have the world's greatest leaders, then would their followers not agree? What about the 360 degree evaluation system so scares officers? The answers to these questions are beyond the scope of this paper, but perhaps investigating about values-in-use versus espoused values would provide insight.

Conclusion

When I first started this research, I thought that the military needed an ethics code that would protect the moral warrior. An officer then would be able to refer to the code when making an ethical decision and that the organization would back the officer even if the decision were contradictory to orders. However, much like Professor Kuhn, one quickly realizes that the unique environment of the military could not possibly entertain a universal ethical code. However, because the unique environment of the military requires officers who have values (even if the system suppresses those at certain times) it would behoove the organization to ascertain the moral and virtuous make-up of its future leaders. A solution is to have a more robust analysis of the individual conducted and made part of the official record. The US Army has determined that more information is required for leader development, it just has not exhibited the organizational courage to make that information a part of the official record. Arguably, the most important process conducted by any organization is to choose its leaders, military organizations need to treat it as such.

Notes

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6. Chris Argyris and Donald A. Schon, *Theory in Practice: Increasing Organizational Effectiveness*, (San Francisco: Jossey-Bass Inc., 1974).
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8. Thomas B. Grassey, *Military Professional Ethics: The Bad News*, <https://www.hsdl.org/?abstract&did=742270> (accessed 20 March 2015).
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13. Department of Defense Directive 5500.07-R, *The Joint Ethics Regulation*.
14. Note copied from unpublished paper of Major Intachi, Exec. Order No. 12731 (17 October 1990) detailing 14 fundamental principles of ethical service required of each Federal employee:
 - Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
 - Employees shall not hold financial interests that conflict with the conscientious performance of duty.
 - Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
 - An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
 - Employees shall put forth honest effort in the performance of their duties.

- Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.
- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
- Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
- Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.
- Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

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21. Paolozzi, *Closing the Candor Chasm*.

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24. Author's own experience at the conference.

Chapter 7

Moral Injury and the Problem of Facing Religious Authority

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Why would a Soldier suffer moral injury after killing an enemy combatant even when the legal and moral expectations of warfare have been met? Combatants often acknowledge that killing another human being causes them to begin a process of reconciling actions with personal convictions. The trigger for this process is not always the knowledge of killing “someone,” but a view of the face and the impact of killing “someone” in particular.¹ Dave Grossman describes this as trauma from a psychological perspective while Jonathan Shay describes it from a moral perspective.² This paper will explore the impact of killing through the religious lens of Jewish and Christian thought. In light of this, the thesis developed here is that the process of recognizing the face of another person, including an enemy, brings one into a position of responsibility for the person and that denying this responsibility by killing creates an ethical and religious conflict leading to moral injury.

Attempts to define religion are notoriously problematic, not to mention defining religious authority.³ Nevertheless, those who accept religious authority are tethered to certain precepts around which they continually circle. For example, those in the Jewish and Christian traditions revolve around certain commands that are timeless truths for which they are responsible, such as “Thou shalt not murder.”⁴ This is the concept of religious authority used here. Therefore, the *problem* of religious authority in the Judeo-Christian tradition is not a fallible “robed authority,” but the failure to face and obey the commands of God. The Pentateuch teaches that we must love our neighbor and the New Testament teaches that we are to love and pray for our enemies.⁵ Passages such as these are not recommendations, but commands to which the faithful are “anchored” and for which they are responsible. It is this point of responsibility which will be explored and expanded in order to appreciate the origins of moral injury; specifically, the responsibility one person has for another is an innate and aspirational duty that is protected and blessed by God’s commands. It is my hope that understanding the nature of mutual responsibility may assist combatants in preparing for the possibility of moral injury in a way that is consistent with the nature of humanity and religious authority.⁶

A helpful framework for understanding responsibility in relationship to moral injury is Jonathan Shay’s description of moral injury as a “betrayal of what is right.”⁷ Because war complicates the reciprocal nature of responsibility by thrusting one man into mortal combat with another, I suggest that the cycles of regret and guilt are indicative of one circling around a deeper sense of fractured responsibility.⁸ This may not be immediately evident to a veteran in the same way that more deliberate ethical conflicts, such as the giving or withholding respect, can be remembered and understood. The idea is that fighters tend to respect fighters, whether they are in the ring or on the battlefield. If one’s opponent is denied respect, a key step in preserving the innate sense of responsibility is lost, setting the conditions for inhumane treatment and adding an additional layer of “betraying of what is

right.” For this reason and other variables in war, moral injury may not be experienced by all to the same degree, but can be experienced by any combatant especially in the face of irrepressible memories of killing a specific person.⁹

Preparing civilians for duty as combatants has historically been limited to basic tactical training with little thought to mental or spiritual preparation beyond unit cohesion and the inclusion of chaplains to provide for specific religious services and counseling. By World War I there was an expectation that the burden of national defense was a “sacred duty” to be shared by citizens willing to make the supreme sacrifice while those who opposed war on moral grounds were demonized as unpatriotic.¹⁰ Thinkers from Europe speculated on what virtues war would bring to humanity.¹¹ A young Ludwig Wittenstein thought that being close to death might bring him the “light of life” and wrote, “Now I might have the possibility to be a decent person, because I find myself face-to-face with death.”¹² Sigmund Freud saw war as the destruction of artifice and the return to the authentic: “It eliminates the layers of sediment deposited in us by civilization and it allows the primitive man to reappear.”¹³

However, World War I produced a different and devastating reality. Wittenstein was left “speechless,” and widespread doubt was cast on the notion that facing death for one’s country was a means of virtue.¹⁴ General Patton later provided a pithy new perspective and famously stated that the point of war is not to die for your country but to give the enemy a chance to die for his country.¹⁵ Interestingly, by the end of World War II, General S.L.A. Marshall concluded nearly 75 percent of men facing the enemy resisted the act of killing another human being in combat to the point of conscientious objection despite training, orders, or even the instinct of self-preservation.¹⁶ As a result, training changed to incorporate human shaped targets and reflexive fire drills to condition trainees to fire with greater frequency and accuracy, boosting the numbers of combatants firing with the intent to kill to 55 percent in Korea and 95 percent in Vietnam.¹⁷

Some speculate this training has raised the number and severity of combatants who suffer psychological damage.¹⁸ If this is the case, what is the essence of what Marshall described as “the point of being a conscientious objector?” Grossman argues that across cultures and time, it is fundamentally the recognition of the enemy’s humanity, particularly by a view of the face, or efforts to avoid recognition of the face during combat and the act of killing.¹⁹ What happens when the point of conscientious objection is crossed? The combatant’s action crosses a moral line of right or wrong that cannot be forgotten. Shay notes that this loss of innocence in our culture was referred to as *themis* in ancient Greece, a “betrayal of what is right,” referring to the loss of an adult’s cloak of moral safety.²⁰

Both Grossman and Shay describe the psychological process used to de-humanize the enemy in order to make killing more tolerable. For example, avoiding visual contact, using profane and de-humanizing terms, failing to respect enemy or civilian dead, and intentional or unintentional misuse of lethal force can all lead some combatants to later reflect upon their actions with remorse or bitterness, even if the actions were “justified” by the state.²¹ As the memories of these circumstances become fixed over time by recurring images in

memories and dreams, regret may take on greater significance in the minds of veterans, causing some to wonder how they might be accountable for their actions in combat.²²

Many veterans look beyond human responsibility to divine accountability and how they may answer for past actions, raising an important point for clarification. While verbalizing one's fear of accountability may be an indicator of moral injury, so might a public display of confidence before God. For example, one World War II veteran reflected upon his past stating, "The point of his bayonet was no further than you are from me when I shot him. I'm not a young man anymore, and soon I'll have to answer to my Maker for what I have done."²³ Conversely, there are some, such as Chris Kyle, who claimed he could answer to God for every shot he took even while he suffered inner turmoil.²⁴ In both cases, a traumatic killing happened that prompted inner turmoil and concerns over accountability. In contexts such as these, religious authority is often used as means to ease turmoil or resolve questions of accountability. However tempting it is to assume this to be the primary purpose of religious authority, care must be taken not to confuse the original purpose of religious authority to bless and protect others with the necessary (and gracious) power of religious authority to forgive the sins committed against others. Many are familiar with the refrain, "There is power in the blood," but the sacrificial systems of the Old Testament came only after Adam chose to disobey God's command and after Cain chose to ignore God's word of warning. The original purpose of God's word, in addition to fostering a relationship with God, was to provide both blessing and protection for Eve and for Abel. However, Adam and Cain both resisted God's word for selfish reasons which resulted in bringing shame and violence to those for whom they were responsible.²⁵

In order to further explore the nature of responsibility, I will first summarize some of the thoughts of Emmanuel Levinas and Paul Ricouer as two voices from the Jewish and Christian traditions. These men are serious thinkers who speak from the experience of war as combatants and prisoners of war (POWs). I cannot write as one who has mastered their methods, but only as one who views some of their conclusions as useful in understanding ethics within combat. They are concerned with exploring the conditions for human recognition, although not for the purpose of describing the effects of combat *per se*. However, what they present demonstrates why the research of Grossman and Shay on human recognition and the face is well grounded.

Both men make similar points, but from different perspectives. They demonstrate that the wellbeing of the "self" is found by recognizing the face (humanity) of the "other" and in being responsible for that person, not from a position of power or paternalism, but in the greater sense of service and sacrifice. As individuals who personally suffered and witnessed war, they are able to provide the "mechanics" of why feelings of regret, responsibility, and accountability become acute in ways that few philosophers can. Their ideas are not unique to themselves, but come forward with a vocabulary and clarity as ones who plumbed the depths of hardship found in war.

Emmanuel Levinas was a Pole born to a Jewish family, who made his way to France via Russia and Germany. He entered the French Army early in WWII, was captured and spent the remainder of the war as a POW. Just as Grossman and Shay observe that the face

of the enemy creates a sense of understanding of what is right and what has gone wrong, Levinas argues that ethics and personal awareness begins with a view of another's face.²⁶ He writes that the view of the face reveals a fundamental expression saying, "Do not kill me," and beyond that, a primordial expression from "Infinity" saying, "Thou shalt not kill."²⁷ This visual encounter is the genesis of ethics, calling the goodness of the self into action by extending dignity and accepting responsibility for one's neighbor.²⁸ But what if the self decides to "totalize" and kill the other, as Levinas observes in the "sober coldness" of Cain, who defiantly questioned God asking, "Am I my brother's keeper?"²⁹ Rejecting responsibility for Abel and killing him had a lasting effect. Though God was merciful in how he called Cain to account, he still lived under the bondage of a curse. By referring to Cain, Levinas is not attempting to equivocate wanton murder with necessary killing in combat, but is simply arguing that in the ultimate sense, face-to-face killing results in bondage because of the futility in attempting to deny human fraternity and mutual responsibility.³⁰ In much the same way, Shay observed that killing in combat resulted in a type of "enslavement" among combatants suffering moral injury, and the Greeks believed that Mars, the god of war, deceives its participants of its true nature.³¹

Paul Ricoeur was born into a Protestant Christian family in Valence, France. His father was killed in World War I and as an adult Ricoeur was drafted into the French Army during World War II, and was soon captured and remained a POW for the duration of the war. Although Ricoeur does not use the term "moral injury," he is concerned with listening to the stories of those who have been victimized and experienced violence and what this type of interaction implies in the ethics of the human to human encounter.³² He argues that listening to victims is a responsibility for the self and that the sum of responsibility is a "counting on" and "being accountable for" another, i.e., the victim.³³ Refusing to listen, or even denying these stories, is a defense mechanism that shields the listener from any sense of responsibility for the victim, but it also "kills the victim a second time" by explaining away and emptying the "murderous events" of meaning.³⁴ Therefore, the responsibility to listen to a victim is a process that engenders mutual recognition and responsibility because of the way the self should allow the other to be the primary concern of the ethical relationship, an idea from which Ricoeur draws inspiration and sees a parallel by what is taught in Gospels, "Whoever would save his life must lose it."³⁵

The thrust of Levinas' and Ricoeur's thoughts are that the self is one who *primarily* encounters the other and is therefore responsible for that person by either receiving the view of the face or verbal testimony. Ethics then is not something that starts or is determined in isolation, but comes to the self by being responsible for those who are encountered. Bondage or moral injury is a result of breaking or denying this innate and ethical bond of responsibility. As an aside, Ricoeur's work helps explain why those who suffer moral injury find good counsel so cathartic and why those who resist speaking of their experiences struggle so mightily. Additionally, Levinas provides insight into the issue of survivor's guilt.³⁶ In these cases the self has accepted responsibility for the safety of his or her friend. But when death comes by the hand of the enemy, the self, now a survivor, is haunted by feelings of responsibility such as, "I should have done more" or holds him or herself accountable by

thinking, “It should have been me.” Sadly, substance abuse, depression, and suicide sometimes become the means of being accountable for the “sin” of survival after combat.

During combat any number of tragedies may happen that illustrate how the violation of responsibility was not the intent of combatants, especially when civilians or even children are killed. For example, a civilian driving a car with faulty brakes is unable to stop at a traffic control point (TCP) with tragic results, or civilians become lost and confused in combat and literally end up in the wrong place at the wrong time. Young combatants may try to shake off these events at the moment and say, “It’s tough to be them,” but the regret and growing need to be accountable to someone for their actions often becomes undeniable.³⁷ Furthermore, in all of these circumstances the combatants may be well within the rules of engagement and engage the right people, but as accounts from men such as CPT Kudo illustrate, death and killing in combat cannot be reduced to a legal matter when in fact it is a moral matter.³⁸ Making it a legal matter is appealing, for then the responsibility and accountability might rest on the desks of lawyers.³⁹

The circumstances just mentioned are as understandable as they are tragic, but the arrival of a genuinely violent person on the battlefield is a different matter and unfortunately, no war seems to be complete without them. Theoretically, the legal and personal justifications for killing these people in combat come together in such a way that one’s conscious should be free from guilt by killing the worst of the worst, if it is even possible to identify who they are.

Such is a line of inquiry that leads to “Just War Theory” which Robert Meagher believes tends to confuse and emphasize the legal over the moral, pushing the humanity out of the enemy *and* oneself.⁴⁰ The humanity of the enemy must be kept in view, for if the treatment of the enemy could be different based on various moral opinions, Levinas and Ricouer would have little to offer in their theories other than interesting and humane thoughts. However, because the truly violent *are* human, they challenge the temptation that responsibility to violent actors can be suspended because any encounter, with any human being, is inherently one of responsibility. Granted, one may or may not find the arguments of these men compelling, but of more importance is their consistency with the religious authority of the Jewish and Christian traditions.

These religions continually call those of faith to “Love thy neighbor” without apology for circumstance because they originate from God’s will for one human to protect and be a blessing to another. Yet, facing this religious authority is challenging, for if it is hard to face and love a contentious neighbor, how much more an enemy?

Jewish tradition summarizes the extent of these commands by stating, “Love thy neighbor is one of the great principles in the Torah.”⁴¹ The great Rabbi Hillel adds, “If I am not for myself, who is for me? And if I am only for myself, what am I? And if not now, when?”⁴² In positive terms, the command to “love your neighbor” or “love your enemy” can also become a means to recognizing God in the Jewish faith, as Levinas implies by referring to the “Infinite” and the “Glory of the Infinity.”⁴³ For those of the Christian faith, the scope of the Old and New Testaments are summarized by Jesus as the first and second greatest commandments, “Love the Lord your God with all your heart, and the second is

like unto it, love your neighbor as yourself.”⁴⁴ This religious authority is not perceived to be a problem when the “other” is God, a friend, or even a stranger. But when one’s neighbor becomes an enemy, the gravity of religious authority becomes apparent once it is grasped that loving one’s neighbor as oneself “*is like unto*” loving God with all your heart. This is profound and speaking as a Christian, the failure to consider the whole of this command is the first step in compartmentalizing religious authority, consigning God or certain neighbors (especially the bad ones) to abstract terms, obscuring the humanity of the neighbor, and reducing religious authority to an absolution for sins.⁴⁵ When this happens, religion can be weaponized and the original purpose of religious authority to protect and bless one’s neighbor is undermined. The problem among Christians has always been a selective application of this command, which in essence is a resistance in facing any whom we find to be distasteful in much the same way that Isaiah conveyed his prophecy, “We hid as it were, our faces from him; he was despised, and we esteemed him not.”⁴⁶

The problem of religious authority for those who profess faith is that the enemy must literally be faced and recognized as being squarely within the boundaries of the religious action of receiving prayer and love. To remove the enemy outside of these boundaries is not just a matter of denying God’s commands, but a resistance in recognizing one’s responsibility for the enemy. How is this to be understood by those of faith who find themselves in combat? Commanders are sent to command in the worst places in the world, and the individual infantryman may be asked to maneuver under the worst circumstances possible. Each individual has a unique and complex set of challenges that rarely allow for one to sit down with the enemy, negotiate, and express genuine concerns over a cup of chai. Unfortunately, “there is a time for war.”⁴⁷ Because war is never ideal, the tough love and discipline from a battalion of infantrymen may be used as a “hard stop” against a violent enemy in order to bring peace.

Whatever the larger political circumstances may be, the individual responsibility to the enemy requires wisdom and discernment, and admittedly invites the tension of doing the moral right or wrong at any given time. But perfect decision making is not the point of religious authority and neither the prophets nor Jesus give any indication that these commands to love and pray for the enemy are easy and free of tension.

The point of the tension is two-fold. First, it refuses to give one autonomy over the decision to kill – even if society, to include the church, grants legal and moral authority to kill out of necessity – in order to prevent the creation of additional widows and orphans. As a result, individuals who bear the burden of killing are often left with feelings of uncertainty for specific decisions in combat. This is precisely the point that Ricoeur and Levinas make by presenting ethics as a challenge to personal autonomy or sovereignty in favor of responsibility to the other. The second reason for the tension is found in the idea that the commands are duties that engender a relational responsibility for the enemy and accountability to God that leads to a *communal action*. This is why it is problematic for those of the Jewish or Christian faiths to argue that killing is a matter of the heart or intent, as if the self is a solitary moral agent in these moments.

Although neither the actions of Moses nor the words of Jesus in relationship to the enemy neglect intent, the sum of their teaching revolves around communal action, not individual intent.⁴⁸ At a minimum one is called to the activity of prayer, which for Christians is an active dependence and fellowship with the Holy Spirit, which should bring the self into a struggle with God over one's response to enemy action and how to meet that enemy responsibly. It may start with a prayer for safety and lead to prayer for members of the unit and then prayer for the enemy. Whatever the content may be, it is a community action rooted in humility before God and responsibility to one's enemy.

My purpose is not to disparage the Augustinian teaching of intent but to state that a communal action is in view and is qualitatively different than the secular view of the individual being solely responsible for one's thoughts (intent), and different from Buddhism which teaches that individual intent facilitates the production of unwholesome thought and action.⁴⁹ For those of faith, failing to wrestle with and face the tension of religious authority prior to combat, if not during combat, leads to dangerous moral terrain, for as Jürgen Moltmann writes, "It is not the evil he does, but the good he does not do, not his misdeeds but his omissions, that accuse him."⁵⁰ So writes Moltmann, who speaks as a German combatant and POW from World War II who later became a Christian philosopher and theologian.

Even if all this becomes lost during the heat and confusion of combat, at a minimum this moral tension keeps the enemy's humanity in view. Shay and Grossman believe this step alone might mitigate a dangerous aspect of moral injury if for no other reason than because it places meaning upon the events surrounding death in combat rather than making allowances for dehumanizing an enemy who may simply have been fulfilling a duty to his community.⁵¹ It should also be understood that even if one does approach combat with humility and wrestles with the tension inherent in religious authority it does not mean that one will avoid moral injury.

Rather, one should expect the possibility of moral injury as part of the service and sacrifice of protecting those who need protection.

Conclusion

Because war breaks the natural process of mutual responsibility, combatants tend to soften the anxiety of killing by temporarily denying the humanity of the enemy or presuming the grace of God's forgiveness as a way to protect one's conscious for killing.⁵² However, to violate the natural order of the human-to-human encounter in war, with or without a belief in God, creates regret and anxiety and inhibits one's ability to "reconnect" with loved ones, the very ones to whom combatants feel the most responsible. Furthermore, the trauma of war often leads to an overt anger toward the ones who combatants believe were most responsible for their personal wellbeing, typically God or political leaders. In the midst of these issues, healing becomes the concern for those suffering from moral injury. To wit: Robert Meagher points out that the emotions of regret and the desire to "make up" for things done in combat leads back to the Greek term *metagnonai*, or repentance. Interestingly, Meagher notes that this term in classical Greek refers more to "make over."⁵³ Although the purpose of this paper is to identify a root cause of moral injury, Meagher hits on a concept that is consistent with the need addressed in the Jewish and Christian traditions

to restore broken relationships. Perhaps it could be said that what is needed for healing is an ability to “re-make responsibility over again” with others. However, this discussion and the resources of religious authority regarding forgiveness and repentance, as it relates to human recognition and responsibility, are reserved for the appendix for the sake of maintaining focus on this paper’s thesis.

Recommendations

The thesis suggests that the process of recognizing the face and humanity of the enemy brings one into a position of responsibility to the enemy and is consistent with religious authority. Where this principle is acknowledged, life has the possibility to flourish, but where this principle is set aside, the potential for moral bondage abounds *regardless* of whether one believes in God and scriptural authority or not. Nevertheless, if the military community is to be a profession in its conduct of war and serious about addressing moral injury, is there not a moral imperative to be professionally responsible to the enemy beyond documents such as the Rules of Engagement and Laws of War which tend to emphasize legal compliance?

Pete Kilner believes we should teach ethical decision making prior to combat and Lieutenant Colonels Fromm, Pryor, and Cutright write that Army values sometimes only extend as far as other US personnel and not to the enemy.⁵⁴ Additionally, they have suggested that humility be added as a value for the Army.⁵⁵ Their thinking is good, for if the only consideration in our values is of “me and mine,” we fail to address a core issue of the human to human encounter in combat. The purpose of presenting Ricoeur and Levinas is to briefly demonstrate that recognition of the other entails an innate ethic of responsibility. One way to prepare combatants for war is to teach respect for the enemy as a means of responsibility that holds the enemy within the boundaries of humanity. Teaching this holds us accountable to the relationship which exists with the enemy, however abstract it may seem until it suddenly becomes visible and violent. Violence will spark a range of emotions, but again fighters tend to respect fighters whether they are in the ring or on the battlefield, and when respect is withdrawn the actions that follow can sow the seeds of regret rather than honor long after the fight is finished and passions have subsided. Therefore, respect needs to be trained for precisely because of the unpredictable nature of violent encounters. An anecdotal story from Madeleine L’Engle brings forward this truism along with the theory presented in this paper:

Father’s war was not like our wars today. In his war the enemy still had a face. Once, a good many years after the war, my parents were eating dinner in a Spanish inn, and suddenly Father got up from the table in great excitement and rushed across the dining room to a man who, in his turn, was hurrying to greet Father. The two men embraced warmly, and Father brought his friend over to the table to meet Mother: the man was a German; he had been an officer in the Kaiser’s army; he and Father had fought against each other at the front. It is difficult to understand such an incident today. These two ‘enemies’ were genuinely happy to see each other; they had shared an extraordinary experience; they respected and honored each other. I wonder if that can happen today.⁵⁶

My point is not to throw a romantic light upon the nature of combat or minimize the perniciousness of certain members of the enemy, but to illustrate respect as an aspect of the warrior ethos that maintains a perspective of responsibility to those we fight, even if we never meet them in person. Young men enter combat far more interested in protecting one another and meeting the test of combat than in dehumanizing the enemy. Some may engage in face-to-face combat as stated in ADP 1 and hearing a leader state, “There is your enemy. Respect him or die” communicates a tone and resolve necessary to keep a young combatant *responsibly* alert on physical, emotional, and spiritual levels.⁵⁷ I recognize that ADP 1 (appendix 2) mentions that respect should be given to all, but I recommend that the core Army value of respect be re-considered to explicitly include respect for the enemy since these values are memorized and referred to on a regular basis by Soldiers of all ranks.⁵⁸ For example, the definition could be changed to read, “Treat people as they should be treated. In the Soldier’s code, we pledge to treat others with dignity and respect to include those whom we engage in combat. Respect is what allows us to appreciate the best in other people.”

Such wording would be consistent with all military branches who already call its members to a higher level of conduct and moral leadership than is expected of civilians. Furthermore, an approach such as this could easily be implemented as an institutional value, a military occupational specialty (MOS) specific value, and as an individual value that is also consistent with the personal beliefs many have regarding religious authority and humanity in general.

Humans are not designed to easily accept the physical, emotional, and moral destruction found in war and will suffer moral injury when sent to war. As a result, military sacrifice carries scars prompting at least one individual to recommend that civilians thank Soldiers for their sacrifice rather than their service.⁶⁰ This is why we must seek to understand the effects of war and look beyond a purpose that revolves around winning to an ethic that defends the defenseless, the human dignity of US service members, and the dignity of those we engage in combat.⁶¹ This will not mean Soldiers will never fire weapons in anger or lose their sense of humanity in combat, but perhaps they may train for war in such a way that they enter combat having been encouraged to consider a responsibility beyond themselves. Perhaps they may also deploy with an understanding that casually or deliberately denying the enemy humanity and respect during combat leads to a slow death even if the physical fight is won.⁶²

Therefore, we should not “weary in doing good” or hesitate to translate the countless personal efforts of respecting the enemy during the last thirteen years of combat into an Army value that prepares the next generation of combatants for the reality of war and moral injury.

In Omnia Paratus

Appendix 1

In a study on Vietnam veterans, those who had a positive view of God and sought forgiveness fared better than those who felt alienated by God for various reasons.⁶³ This seems to coincide with religious “common sense.” However, it is important and necessary to understand how the resources and doctrines of the Jewish and Christian faiths have influenced Emmanuel Levinas as a philosopher and Jürgen Moltmann as a theologian as they describe how recognition and responsibility lead to “freedom” and “life.”

Levinas believes that freedom was possible through a comprehensive view of forgiveness. He does not speak to the issue of killing in particular, but as one who has suffered in a way that reflects upon his time as a POW. Drawing inspiration from Lamentations 3:3 he writes, “To tend the cheek to the smiter and to be filled with shame,” is a trauma of persecution in which the self is to pass from the outrage to the responsibility for the persecutor.⁶⁴ In this case, responsibility means that he not only forgives the persecutor of sins, but he becomes the expiation and substitution for the persecutor’s sins, and in this sense maintains responsibility and accountability for the other.⁶⁵ This is necessary for Levinas’ thinking because he states that freedom cannot ever be gained by mastery over the other, and indeed bondage is the result of one’s attempt for mastery over the other, because in reality such a move is a retreat into the safety of one’s own mind for “self-affirmation” and “self-discovery.”⁶⁶

Whereas Levinas drew from his Jewish background which teaches forgiveness for sin by substitution, Jürgen Moltmann contributes as a Christian and uses the concepts of substitution and forgiveness in Trinitarian terms. Moltmann believed he and his fellow countrymen in post-war Germany had been “imprisoned” by the guilt of initiating violence against so many and wondered if they might be forgiven and have life. He understood that “life” depended upon recognition of the victim because it was only in the recognition of the victim that the perpetrator could truly know oneself, just as the Apostle Peter did not truly understand his offense until he looked Jesus in the eye after denying him and hearing the cock crow. But, Moltmann believed there were three problems. First, most perpetrators resist facing their victims. Moltmann writes, “Victims have long memories, but those who caused suffering have short memories. They don’t know what they have done and don’t want to know. So the perpetrators are dependent on the victims if they want to turn away from death.”⁶⁷ Second, the victims who needed to be recognized had been killed and so visual recognition was impossible. Third, even if the surviving victims could be found for whom the perpetrator had been responsible, the victims “have no right either to condemn them or forgive them.” This does not mean the victim has no desire to forgive the perpetrator, but the authority of a victim is limited only to helping the perpetrator see himself or herself for who he or she is and therefore cannot become an expiation for their sins.⁶⁸

Moltmann thought of Christianity in terms of hope and that Christianity is inspired by an object that is hoped for, the object being Jesus Christ. Moltmann then presents Christ to his countrymen as the one who was tortured. While Levinas leads one to consider that the hostage (victim) be the substitute for the violent neighbor, Moltmann argues that it is the recognition of the tortured Jesus who is the substitute for the face of the victims. This

recognition becomes the moment of truth - “the mask falls. The torturer recognizes himself for what he is.” Yet, hope is gained and not lost because the authority of that “judge” is based in the one “who bears the sins of the world.” It is in this moment that “justice creates new life.”⁶⁹ By placing the offending humans in a position to view himself, Christ carries the religious authority of Colossians 1:27 which states “He is our hope” by effectively being responsible and accountable for the sins of the perpetrators and therefore brings life to those trapped by guilt.⁷⁰

In these two ways, Levinas and Moltmann draw from their respective faiths to provide a basis for how one suffering from either the trauma of violence or the trauma of initiating violence might re-make responsibility and understand accountability through prayer and the action of Christ. It is true that there are those such as Maurice Merleau-Ponty, also a World War II combatant and philosopher, who do not draw upon religious authority but sincerely accepted the regret that he could not act upon his intrinsic responsibility to love those whom he presumably killed by calling in artillery strikes.⁷¹ As a result he wishes to re-establish renewed efforts of love.⁷² Merleau-Ponty does not link this responsibility to an accountability to God or look to God’s commands or actions as a resource to re-establishing accountability but seeks to do so by generosity with the next human encounter.⁷⁸ However, the value of religious authority as found in the Old and New Testaments, in addition to teaching responsibility for the other, is an acceptance of accountability that lies beyond the self for every action taken. For where there is accountability, there is the possibility of reconciliation, and where one finds reconciliation there lies the essence of religious authority, not as a tool to be mastered, but as source of love that dismantles the grip of fear.

Appendix 2

Excerpts from *ADRP 1, The Army Profession*

WHY AND HOW THE ARMY FIGHTS

2-19. The Army defends the security and integrity of the United States as a sovereign nation. It protects the rights and interests of the American people, by conducting military operations as directed by civilian leaders in a manner that also respects the basic rights of all others, as prescribed in the law of armed conflict.

2-22. It is critical for Army professionals to understand that they are the institution behind which the Constitution extends and protects the rights of every American. If we are to maintain our legitimacy as a profession and safeguard the United States, we cannot afford to misuse the lethal power given to us by the Nation. Every failure of Army professionals to honor basic rights and adhere to the law of armed conflict diminishes the trust of the American people and the respect of the international community. These failures are incidents where a few members of the Army Profession cause great harm to the legitimacy of our profession and our Nation.

THE ARMY ETHIC AND THE APPLICATION OF FORCE

2-29. A fourth principle of the law of armed conflict is unnecessary suffering. This is a more complicated requirement than the other three principles, since it has implications for force design, weapons development, and tactical employment of certain systems. Sometimes referred to as the principle of superfluous injury or humanity, this principle requires military forces to avoid inflicting gratuitous violence on the enemy. This principle has significant impact on the development and fielding of certain weapons systems. For example, in the late 1980s the Army developed and tested a laser weapon that could automatically detect and disable enemy optics, such as an antitank gun sight. However, the laser used to destroy the optics also had the potential to permanently blind the enemy gunner. The Army never fielded the system. Both military and civilian professionals will encounter this principle in the course of their careers, directly or indirectly. Tactically, this principle imposes restraints on the individual Soldiers involved in close combat. For example, a sniper team may not deliberately maim an enemy combatant to inflict crippling injury and tempt others to come to the target's rescue.

HOW WE LIVE – WITH VALUES AND BY ETHICAL PRINCIPLES

2-34. Army professionals treat each other and all humans with dignity and respect—treating others as they should be treated. They build trust within the profession and with the Nation through honorable service. Trustworthiness comes from the positive belief and faith in the competence, moral character, and resolute commitment of comrades and fellow professionals.

Notes

1. David Grossman, *On Killing* (New York: Little, Brown & Co., 1995), 119. “As men draw near it becomes extremely difficult to deny their humanity. Looking in a man’s face, seeing his eyes and his fear, eliminate denial. Instead of shooting at a uniform and killing a generalized enemy, now the killer must shoot at a person and kill a specific individual.”

2. Grossman, *On Killing*, 28, 29. “This (refusal to fire) indicates a previously undiscovered psychological force. A force stronger than drill, stronger than peer pressure, even stronger than the self-preservation instinct . . . If a soldier goes up and looks at his kill – a common occurrence when the tactical situation permits – the trauma grows even worse, since some of the psychological buffer created by a midrange kill disappears upon seeing the victim at close range. Also see page 78. See also, Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character* (New York: Scribner, 1994), 4-5.

3. Jonathan Z. Smith, *Relating Religion* (Chicago: University of Chicago Press, 2004), 184. Smith discusses the process of transposing religion from a supernatural to a natural history, from a theological to an anthropological category and then discusses various methods of how religion can be understood. William T. Cavanaugh, *The Myth of Religious Violence* (New York: Oxford University Press, 2009). Cavanaugh develops his discussion in chapter two by discussing how religion is often defined in either substantivist or functionalist terms, and that religion as a term is a concept that constructs and is constructed by different kinds of political configurations therefore giving it multiple expressions. Tomoko Masuzawa, *The Invention of World Religions; or, How European Universalism Was Preserved in the Language of Pluralism* (Chicago: University of Chicago Press, 2005), 319. “This concept of religion as a general, transcultural phenomenon, yet also as a distinct sphere in its own right . . . is patently groundless.” Masuzawa notes the tendency in the west to create history and the “science of religion” and as such the discourse about religions was also a discourse about secularization as a result of categorizing topics of study such as economics, political science, and sociology. This has resulted in dozens and dozens of different definitions for religions. Talal Asad, “The Construction of Religion as an Anthropological category,” in *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore, MD: Johns Hopkins University Press, 1993), 54. Asad discusses the difficulties of authority and power associated with religion by writing, “My aim has been to problematize the idea of an anthropological definition of religion by assigning that endeavor to a particular history of knowledge and power out of which the modern world has been constructed.”

4. William L. Holladay, *A Concise Hebrew and Aramaic Lexicon of the Old Testament*, (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 1988), 346. Exodus 20:13. The sixth commandment is commonly remembered as “Thou shalt not kill” but is more properly translated, “Thou shalt not murder” from Biblical Hebrew as done in the NIV and NET. Killing is translated as (*harag*) and murder (*rasah*). The words both have different moral connotations. *Harag* refers to killing in combat, but the commandment uses the word *rasah*, which means murder and also encompasses the meaning of careless or neglectful killing. While many civilians assume the sixth commandment is the one they have kept, combatants assume this is the one they have broken. Two things need to be said here. First, because of the use of words for killing and murder in the Old Testament, combatants must keep the moral issues of both in view and refrain from reducing the vocabulary of *harag* as permissible in terms of being “legal” as a way of artificially “keeping” the commandment for personal or societal accountability. Secondly, killing in combat happens, but it does not lead to good because it is a process that indicates that not all

is well in the world during war. One's innate hope for what is right or good as described by C.S. Lewis can quickly be lost and violated in what is a "fallen" sinful world.

5. Matthew 5:43-48

6. I have intentionally left out any idea of proper preparation as a means to prevent moral injury. Prevention may be a result of proper preparation but at best, prevention can only be hoped for on a case by case basis depending on who the individual is. Nevertheless, my line of thought is that just as Alcoholics Anonymous maintains that the first step toward recovery is acknowledging the problem, understanding the issues of accountability may be a step forward in recovery for those struggling with moral injury.

7. Grossman, *On Killing*, 117. An example of regret as a starting point for moral injury is the following: "This was the first time I had killed anybody and when things quieted down I went and looked at a German I knew I had shot. I remember thinking that he looked old enough to have a family and I felt very sorry." On page 39 Glenn Gray describes his own personal guilt and anguish resulting from his WWII experiences, and cries out with the pain of every self-aware soldier who has thought this matter through: "I, too, belong to this species. I am ashamed not only of my own deeds, not only of my nation's deeds, but of human deeds as well. I am ashamed to be a man." This, says Gray, "is the culmination of a passionate logic which begins in warfare with the questioning of some act the soldier has been ordered to perform contrary to his conscience."

8. Grossman, *On Killing*, 39. In discussing the nature and source of the resistance to kill, Grossman touches on this aspect of mutual responsibility, "In killing the grunts of North Vietnam, the grunts of America had killed a part of themselves."

9. Grossman, *On Killing*, 74. "We thought we had managed all right," he told Holmes, "we kept the awful things out of our minds, but now I'm an old man and they come out from where I hid them. Every night."

10. Peter Paret, *Makers of Modern Strategy: From Machiavelli to the Nuclear Age* (Princeton: Princeton University Press, 1986), 513. See also, Perry Bush, *Two Kingdoms, Two Loyalties* (Baltimore: The Johns Hopkins University Press, 1998), 28.

11. Domenico Losurdo, *Heidegger and the Ideology of War* (New York: Humanity Books, 2001), 18. In November 1917 Edmund Husserl stated in a lecture "Death has once again regained its original sacred right. It is here again to remind one of eternity. And thus again we have developed organs to see German idealism." Scheler theorized that, "War reestablishes in our consciousness the true, realistic relationship between life and death." Thomas Mann argued, "In this sense, the result of war can well be a 'superior humanity' an elevation, a maturity, a nobilization of the human." Despite its horrors, war can produce "freedom, and religious serenity, a detached attitude toward life, and the ability to hover above fear and hope, which is undoubtedly the opposite of moral degradation, and thus, the overcoming of death."

12. Losurdo, *Heidegger and the Ideology of War*, 22.

13. Losurdo, *Heidegger and the Ideology of War*, 18.

14. Wesley Cecil, "Wittgenstein His Life and Philosophy" (YouTube, 30 August 2012). <https://www.youtube.com/watch?v=TNaBRR-XeAs> (accessed 5 March 2015).

15. George S. Patton, "Third Army Speech - England 31 May 1944," <http://www.wjpbcr.com/patton.html> (accessed 14 March 2015).

16. Grossman, *On Killing*, 30. S.L.A. Marshall studied why most soldiers failed to fire their weapons and concluded that "the average and healthy individual . . . has such an inner and usually unrealized resistance towards killing a fellow man that he will not of his own volition take life if it is possible to turn away from that responsibility . . . At the vital point," says Marshall, the soldier "becomes a conscientious objector." John Whiteclay Chambers II, "S.L.A. Marshall's Men against Fire: New Evidence Regarding Fire Ratios," *Parameters* (Autumn 2003), 120. Chambers suggests

that Marshall's claim that only 25 percent of his soldiers fired their weapons is at best a guess based on Marshall's interview methods.

17. Dave Grossman, "Aggression and Violence," in *The Oxford Companion to American Military History* (Oxford University Press, 2000). http://www.killology.com/article_agress&viol.htm (accessed 14 March 2015).

18. Rita Nakashima Brock and Gabriella Lettini, *Soul Repair: Recovering from Moral Injury after War* (Boston: Beacon Press, 2012), xvii. The testimony that some "veterans have made about shooting unarmed civilians in a split second, without making a conscious decision to take a life" has been attributed to the conditioning of reflexive fire drills.

19. Grossman, *On Killing*, 28-29. This lack of enthusiasm for killing the enemy causes many soldiers to posture, submit, or flee, rather than fight; it represents a powerful psychological force on the battlefield; and it is a force that is discernible throughout the history of man. The application and understanding of this force can lend new insight to military history, the nature of war, and the nature of man. Grossman, *On Killing*, 128. "The eyes are the window of the soul, and if one does not have to look into the eyes when killing, it is much easier to deny the humanity of the victim. The eyes bulging out 'like prawns' and blood shooting out of the mouth are not seen. The victim remains faceless, and one never needs to know one's victim as a person. And the price most killers have to pay for a close-range kill – the memory of the 'face terrible, twisted in pain and hate, yes such hate' – this price need never be paid if we can simply avoid looking at our victim's face." Grossman, *On Killing*, 117. "Later I walked over to take another look at the VC I had shot. He was still alive and looking at me with those eyes. The flies were beginning to get all over him. I put a blanket over him and rubbed water from my canteen onto his lips. That hard stare started to leave his eyes. He wanted to talk but was too far gone . . ."

20. Shay, *Achilles in Vietnam*, 4, 5 & 193. Themis – betrayal of what is right. The social morality of "what's right," what Homer called themis, is the normal adult's cloak of safety.

21. Grossman, *On Killing*, ". . . In each of these instances the presence of the hood or blindfold ensures that the execution is completed and serves to protect the mental health of the executioners. Not having to look at the face of the victim provides a form of psychological distance that enables the execution party and assists in their subsequent denial and the rationalization and acceptance of having killed a fellow human being."

22. Shay, *Achilles in Vietnam*, 110, 118-119.

23. Grossman, *On Killing*, 157.

24. Chris Kyle, *American Sniper* (New York: HarperCollins Publishers, 2013), 430-431.

25. Shay, *Achilles in Vietnam*, 115, 148. This issue cuts right to the heart of the critics (and encouragements) that Jonathan Shay offers to church leaders as a result of working with veterans who have been confused and disenchanted after being taught the power of religious authority rather than the original purpose of religious authority as a means of understanding war and killing. Dr. Robert Meagher also has some notable thoughts on this in *Killing from the Inside Out*. For the purposes of this paper, responsibility rather than accountability will be the main emphasis of religious authority.

26. In the words of Levinas, "Ethics precedes ontology."

27. Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Pittsburgh, PA: Duquesne University Press, 1979), 199. See also, Levinas, *Totality and Infinity*, 199. Levinas capitalizes "Other" in this case to indicate humanity at large.

28. Paul Ricoeur makes a similar argument that the nonviolent testimony of a victim creates an ethic that leads the reader of a text or verbal testimony to lift up the priority of the other and to be accountable for their care.

29. Levinas, *Otherwise Than Being*, 10.

30. Levinas, *Totality and Infinity*, 198, 199 and 214. "Society must be a fraternal community . . . Monotheism signifies this human kinship, this idea of a human race that refers back to the approach of the Other in the face, in a dimension of height, in responsibility for oneself and for the Other."

31. Shay, *Achilles in Vietnam*, 9, 36-37. Shay refers to combat as competing attempts to enslave and that the world of war itself creates the conditions that add up to captivity and enslavement. Grossman, *On Killing*, 37. Regarding the tendency to ignore this issue, Grossman quotes Glenn Gray who observes, "This is especially true of men in war. The great god Mars tries to blind us when we enter his realm, and when we leave he gives us a generous cup of the waters of Lethe to drink." On page 39, which discusses the nature and source of the resistance to kill, Grossman touches on this aspect of mutual accountability. "In killing the grunts of North Vietnam, the grunts of America had killed a part of themselves."

32. Ricoeur, *Toward a Hermeneutic of the Idea of Revelation*, 30. Specifically, Ricoeur is focused more upon a verbal testimony which enlarges the world and perspective of the self rather than the visual testimony to which Levinas gives attention. See also, Paul Ricoeur, *Figuring the Sacred, The Memory of Suffering* (Minneapolis: Fortress Press, 1995), 289-292. Ricoeur was concerned about the accounts and stories of those who had experienced evil, particularly of the Jews who survived the camps.

33. Paul Ricoeur, *Ones Self as Another* (Chicago: The University of Chicago Press, 1992), 165-168. He discusses the distinction between self-consistency and self-constancy, the latter being a responsibility which is the sum of "counting on" and "being accountable for." This effectively results in the "ethical primacy of the other than the self over the self."

34. Ricoeur, *Figuring the Sacred*, 290. Ricoeur argues that denying stories from those who suffered evil is a selfish choice to passively ignore the victim by a process of what he calls "forgetfulness" that kills the victim a second time by using "explanations" or excuses for ignoring the story that effectively level off and empty the murderous events of meaning. Grossman, *On Killing*, 214. Grossman echoes Ricoeur's point, "Perhaps denial of mass atrocity is tied to our innate resistance to killing. Just as one hesitates to kill in the face of extreme pressure and despite the threat of violence, one has difficulty imagining – and believing – the existence of atrocity despite the existence of facts. . . And this simple, naïve tendency to disbelieve or look the other way is, possibly more than any other factor, responsible for the perpetuation of atrocity and horror in our world today."

35. Paul Ricoeur, "Toward a Hermeneutic of the Idea of Revelation," *The Harvard Theological Review*, Vol. 70 (1977), 35. Luke 9:24. Matthew 16:25. Mark 8:35.

36. Daniel Shay, *Odysseus in America* (New York: Scribner, 2003), 93. "But Doc, the only one not hit, felt then and until he killed himself, that he should have kept his two dead buddies alive."

37. Dexter Filkins, "Atonement: A troubled Iraq veteran seeks out the family he harmed," *The New Yorker* (29 October 2012). <http://www.newyorker.com/magazine/2012/10/29/atonement> (accessed 21 March 2015). This is a very insightful article of a story that developed over the course of ten years as Lu Lobello sought to reconcile with the survivors of an Iraqi family who lost three members to his squad in 2003.

38. Timothy Kudo, "How We Learned to Kill," *The New York Times Sunday Review* (27 February 2015).

39. Robert Meagher, *Killing from the Inside Out: Moral Injury and Just War* (Eugene, Oregon: Cascade Books, 2014), 106, 107ff.

40. Meagher, *Killing from the Inside Out*, 142. 2014. Print. See Dr. Meagher's preface. Also, Dr. Meagher argues "Just War Theory" cannot be relied upon to spare particular individuals from

moral injury because of a shifting moral terrain that desensitizes combatants to “push the humanity out of themselves and the enemy.”

41. Sifra 2:12. Leviticus 19:18.

42. Pirke Aboth, Chapter 1. www.sacred-texts.com/jud/sjf/sjf03.htm (accessed 17 March 2015).

43. Rabbi Elliot Dorff, “God in Modern Jewish Thought,” in *Walking with God* (Bel Air, California: American Jewish University & the United Synagogue of Conservative Judaism and the Rabbinical Assembly, 2007), 98. http://www.aju.edu/Media/PDF/Walking_With_God_in_Modern_Jewish_Thought.pdf (accessed March 2015). For example, Martin Buber speaks of the practical and pragmatic “I-It” relationship that people have with one another, “However, if that is the only kind of relationship that we have with other human beings, we have lost what is distinctly human in us – namely, the ability to relate to others for the sake of the relationship itself. He calls this “I-Thou” relationships. The only absolutely pure I-Thou relationship that humans can have is with God . . . We learn to have such relationships through the I-Thou encounters we have with other human beings (“Every particular Thou is a glimpse through to the eternal Thou”) and through reading the ways in which other people had true encounters with God . . .” See also, Levinas, *Otherwise than Being*, 144, 145.

44. Matthew 22:36-40.

45. The imperative to love God and one’s neighbor casts a moral characteristic upon all actions in the Jewish and Christian traditions placing each individual before God in a state of guilt or innocence, shame or honor. This requires a substitution such as the proverbial scapegoat or a sacrificial lamb to expiate sin in order to bring one into right standing with God. Those of the Jewish faith typically recognize the forms of various prayer to be symbolic of this process and Christians recognize Jesus to be the historical substitute and means of forgiveness. But religious authority cannot be defined solely by the call to seek forgiveness of sins.

46. Isaiah 53:3. The King James Version.

47. Ecclesiastes 3:8.

48. Exodus 17:11.

49. This an interesting difference between the intent (*cetana*) of Buddhism and Christianity at this point. According to the Pali canon, the Buddha tells a warrior that he cannot be born in heaven if he dies in battle, not because the Buddha had anything against warriors, but because killing comes only from anger due to how the mind works. Therefore the intent of killing always produces unwholesome and bad karma. The difference also grows due to the difference between the existence of the Soul in the Judeo-Christian tradition and the non-self of the Buddhist tradition as taught by understanding the self as a collection of five aggregates. For further information on this topic one may reference the following: Michael K. Jerryson and Mark Juergensmeyer, *Buddhist Warfare* (Oxford and New York: Oxford University Press, 2010); Daniel W. Kent, *Onward Buddhist Soldiers: Preaching to the Sri Lankan Army in Buddhist Warfare* (Oxford and New York: Oxford University Press, 2010), 156. Pali Canon, *Samyutta Nikaya XLII*. Rupert Gethin, “Can Killing a Living Being Ever Be an Act of Compassion? The analysis of the act of killing in the Abhidhamma and Pali Commentaries.” *Journal of Buddhist Ethics* 11 (2004). <http://www.urbandharma.org/pdf/geth0401.pdf>, 190 (accessed February 2015).

50. Jurgen Moltmann, *Theology of Hope* (Minneapolis: Fortress Press, 1993), 23.

51. Shay, *Achilles in Vietnam*, 110, 118-119. On these pages Shay describes the damage done by a failure to honor the enemy, how debasing the enemy endangers the lives of soldiers while they fight, and that the impulse to dehumanize and disrespect the enemy must be resisted, whether its basis is religious, nationalistic, or racist. The soldier’s physical and psychological survival is at stake. Grossman, *On Killing*, 214. “And this simple, naïve tendency to disbelieve or look the other

way is, possibly more than any other factor, responsible for the perpetuation of atrocity and horror in our world today. Shay, *Achilles in Vietnam*, 117. Here Shay describes how a soldier found comfort in his care of the enemy dead. “The “honored guest” was an enemy Soldier that visited the US Soldier in his dreams. He had taken the time to put that VC Soldier in a body bag and send him back with the US Soldier who had been killed.”

52. This is why a staple training for hostage situations teaches that if at all possible, the hostage should make an attempt to establish his or her humanity with the captors so that the process of recognition, responsibility, and accountability might have a chance to develop.

53. Meagher, *Killing from the Inside Out*, 8.

54. Pete Kilner, “A Moral Justification for Killing in War,” *Army* (February 2010): 55-58, 60. Perhaps no argument will assuage their regret, but looking into their eyes and telling them, “You made the right moral decision with the information you had at hand” can only help. The vocabulary of rights and bubbles can help our soldiers make and justify their judgment calls, not only to 15-6 investigators but, more importantly, to their own consciences. Killing someone, even justifiably, is upsetting at some level. That is normal and healthy. If the killing is morally unjustified, the psychological impact will likely be much greater. See also, Peter Fromm, Douglas Pryer, Kevin Cutright, “The Myths We Soldiers Tell Ourselves (and the harm These Myths Do),” *Military Review* (September-October 2013), 64.

55. Fromm, Pryer and Cutright, “The Myths We Soldiers Tell Ourselves,” 66.

56. Madeleine L’Engle, *The Summer of the Great-Grandmother* (New York: The Seabury Press, 1974), 112.

57. Department of the Army, *ADP 1: The Army* (Washington, DC: US Government, 2012). http://armypubs.army.mil/doctrine/dr_pubs/ (accessed 7 March 2015), 1-15. 1-6. “If the enemy cannot be defeated from a distance using Army and joint capabilities, then Soldiers close with and destroy the enemy – room to room, face to face.”

58. US Army, *The Army Values*, <http://www.army.mil/values/> (accessed 7 March 2015). Respect: Treat people as they should be treated. In the Soldier’s Code, we pledge to “treat others with dignity and respect while expecting others to do the same.” Respect is what allows us to appreciate the best in other people. Respect is trusting that all people have done their jobs and fulfilled their duty. And self-respect is a vital ingredient with the Army value of respect, which results from knowing you have put forth your best effort. The Army is one team and each of us has something to contribute.

59. Chaplain Jonathan Entrekin. 2014 presentation during the Presbyterian Church in American General Assembly. <http://pcamna.org/chaplain-ministries/chaplain-resources/presentations/> (accessed 20 April 2015).

60. Sean Wead, “Ethics, Combat, and a Soldier’s Decision to Kill,” *Military Review* (March-April 2015), 73-74.

61. “Atonement: A troubled Iraq veteran seeks out the family he harmed.” Lu Lobello speaks to the difficulty of seeing a fellow Marine get shot, be engaged in a fire fight, and then witness the approach of cars which were engaged only to find it was a family of civilians, other Marines yelled “Cease Fire!” but not before three of the men in the family were killed. What happened in a matter of minutes turned into years of anguish for Lobello and his squad members.

62. Donna Carla Bailey, “Religious coping, trait forgiveness, and meaning as protective barriers for soldiers” *Graduate Theses and Dissertations, Paper 10821* (Iowa State University Graduate College, 2009), 34-53. <http://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=1875&context=etd> (accessed 26 March 2015). Although this study is mainly concerned with religion and forgiveness after a traumatic event, it made a research distinction between those who had “a positive religious coping” which included a forgiveness trait and those who had “a

negative religious coping.” Those who had a positive religious coping were marked by turning to God, helping others, and religious forgiveness were less likely to suffer from psychological stress than those with negative coping who felt alienated from God and viewed God as punishing and uncaring and therefore had difficulty reconciling faith with their Vietnam experiences.

63. Levinas, *Otherwise Than Being*, 127.

64. Levinas, *Otherwise Than Being*, 127. “It is from the first a substitution by a hostage expiating for the violence of the persecution itself.” “Substituting itself for the other, a responsibility ordered to the first one on the scene, a responsibility for the neighbor, inspired by the other, I, the same, am torn up from my beginning in myself, my equality with myself. The glory of the Infinite is glorified in this responsibility,” 144.

65. Ricoeur, *Figuring the Sacred*, 120. Levinas puts forward the idea of substitution as a way of undercutting any return to the “self-affirmation of some clandestine and concealed freedom.” Ricoeur notes on page 120 that Levinas is concerned with the reality that a pursuit of self-discovery leads to and engenders a forgetfulness of the other. Levinas. *Otherwise than Being*, 118. To put it in Levinas’ words, “the offender who, as offender, requires no less of me [the persecuted] than the gesture of pardon, of expiation.”

66. Jürgen Moltmann, *Jesus Christ for Today’s World*, (Minneapolis: Fortress Press, 1994), 70.

67. Moltmann, *Jesus Christ for Today’s World*, 69.

68. Moltmann, *Jesus Christ for Today’s World*, 69. The previous sentence comes from this page as well.

69. Moltmann, *Jesus Christ for Today’s World*, 68. Moltmann, *Theology of Hope*, 17.

70. Dermot Moran and Timothy Mooney, *The Phenomenology Reader: Maurice Merleau-Ponty and “The Primacy of Perception.”* (New York: Routledge, 2002), 438.

71. Merleau-Ponty, *The Primacy of Perception*, 454.

72. Kascha Semonovitch and Neal DeRoo (editors), *Merleau-Ponty at the Limits of Art, Religion, and Perception* (New York: Continuum International Publishing Group, 2010), 179. Merleau-Ponty is suspicious of the theory of Judeo-Christian ontology represented in Exodus 31:5 by “I am the one who is” as translated by the Alexandrian Bible *ego eimi ho on*, and only holds to the possibility of the “fragile perfume of transcendence” as a new dawn of the divine.

Chapter 8

A Uniform Code of Military Ethics

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Introduction

The US military has been deeply ensconced in combat operations for the past thirteen years. Much of the combat has involved counterinsurgency operations which are difficult and costly, in terms of both resources and lives. Clearly, this has taken a toll on military service members and civilians and created turbulence and unrest throughout the force. The stress of combat operations and high OPTEMPO, along with uncertain budgets, has touched service members and their families. Through it all, public support and trust for the military remains strong. As Colonel John Vermeesch noted, “America’s trust is the lifeblood of the profession.”¹ Indeed, in a 2014 Gallup Poll the military ranked highest as an institution in terms of confidence by American society.² Yet, there are indications that trust may begin to wane.

Ethical digressions and failings have been widespread across all of the services, especially among senior leaders.³ No service has been spared from ethical embarrassment. Ethical lapses, particularly among higher ranking officers and NCOs, have been front-page news and degraded public trust and congressional support in all the services. In 2013, Senator Kirsten Gillibrand (D-NY) introduced legislation concerning the administrative discharge of military service members convicted of specific sex crimes.⁴ Simply put, congressmen did not trust military commanders to deal with these crimes. In a recent study on lying among Army officers, Professors Leonard Wong and Stephen Gerrass postulated that “repeated exposure to the overwhelming demands and the associated need to put their honor on the line to verify compliance, [Army officers] have become ethically numb.”⁵ Furthermore, the Atlantic Council reported that “the string of [negative] reports have many seeing an ethical crisis in the American armed forces.”⁶ Is the American armed forces’ moral compass beginning to fail?

Former Secretary of Defense Chuck Hagel and Commander of the Joint Chiefs of Staff Martin Dempsey responded swiftly to the crisis. General Dempsey wrote a white paper entitled *America’s Military – Profession of Arms*, highlighting, “Our profession is defined by our values, ethics, standards, code of conduct, skills, and attributes.”⁷ Dempsey also initiated desired leader attributes (DLAs) for Joint Force 2020 to be incorporated into the PME schools’ curricula. One of the six DLAs is “make ethical decisions based on the shared values of the profession of arms.”⁸ Hagel appointed RADM Margaret Klein as the first senior adviser for military professionalism. Hagel noted, “This will be an absolute top priority for the service secretaries, the service chiefs, [Chairman of the Joint Chiefs] Dempsey and me.”⁹ Yet have they done enough? What more can be done to reinforce ethical conduct within the military?

This paper will demonstrate that a uniform code of military ethics is essential for the US armed forces today. “Without a stated ethic, the practice and climate of ethical behavior [in the military] is more difficult to directly assess.”¹⁰ This uniform code of military ethics will become the cornerstone of military professionalism and promulgated by each of the military departments in their education and professional development for officers and enlisted. Moreover, this paper will underscore the reasons a uniform code of military ethics is needed and some of the objections to it. The paper then concludes with a way ahead after the uniform code of military ethics is established.

The Military Profession

A uniform code of military ethics is essential first and foremost because the military is a profession. Ethics and professionalism are undoubtedly a top priority for the US military. There has been much written about the military as a profession, especially in the US Army by Professor Don Snider and many others.¹¹ In fact, the Army officially designated calendar year 2013 as “America’s Army: Our Profession” to provide education and training on the Army profession throughout the year. Professor Manuel Davenport documented three commonly accepted standards for an occupation to be a profession. His third standard is that “Members of this occupation state and enforce a code of ethical responsibilities.”¹² Yet, the US military continues to lack a code of ethics.

Doctors, lawyers, accountants, and other professions all have a standard code of ethics that provides rules, procedures, and guidelines for ethical conduct. Why does the US military lack a code of ethics? Major John C. Buckingham stressed:

Members of the military claim to be members of a profession, and most civilians see the military as a profession. Yet the military profession is set apart from that of a doctor or a lawyer by its lack of a unique code of ethics against which members can measure their own performance.¹³

For nearly 40 years, both active duty and retired military professionals have been promulgating a military code of ethics. The late General Maxwell Taylor, former Army Chief of Staff, called for a military code of ethics in 1978, “I conclude that it is worth the effort to undertake the formulation of an officer code, possibly as a first step toward one of the wider scope for the entire military establishment.”¹⁴ Taylor was concerned about the poor ethical state of the US Army immediately after the Vietnam War. In fact, several military professionals have even drafted codes of ethics to fill the void and generate discussion.¹⁵ Colonel (Ret.) Lloyd J. Matthews wrote, “No Armed service has elected to codify and officially promulgate a comprehensive prescription for ethical behavior along the lines of the American Bar Association’s *Model Rules of Professional Conduct* or the American Medical Association’s *Principles of Medical Ethics*.”¹⁶ Thus, a uniform code of military ethics would provide legitimacy to the military as a profession.

Sources of Military Ethics

Some may argue that there already are a plethora of publications dealing with military ethics and ethical conduct for the military profession. Why does the military need another document dealing with ethical conduct? Besides, upon initial entry and screening, all military

service members take an oath, enlisted ranks take an oath of enlistment while officers take the commissioning oath. Matthews underscored, “The officers’ grand corpus of ethical literature is so stupefyingly plenteous as to defy effective assimilation and practical use.”¹⁷ Other documents that deal with military ethics include: the US Constitution, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), the Joint Ethics Regulation, laws of war, the various NCO and officer creeds, and service traditions. Each of these sources provides ethical direction and guidance to military service members. Yet, as Matthews concludes, “That guidance is so copiously profuse in quantity, so diffuse, in its sources, so amorphous in shape, that getting a useful handle on it is effectively impossible.”¹⁸ Buckingham wrote “Numerous documents have alluded to various ethical norms for military officers and men. However, these do not provide a single repository of our ethical standards, nor do they provide for review under a code.”¹⁹ The number of documents dealing with military ethics is overwhelming.

If you conduct an internet search for the term “military code of ethics” there are 47,700,000 results. The first entry that appears at the top of the list is Department of Defense Regulations 5500.7-R dated 11 February 2005 otherwise known as the Joint Ethics Regulation (JER). Chapter 2 deals specifically with standards of ethical conduct. Unfortunately, the language is confusing and often difficult to comprehend, much less apply to one’s daily life. Clearly, the JER is a poor source document for military service members. The JER is more suited to a bureaucracy than the profession of arms because of the legalistic and compliance-based tone.²⁰

A single uniform code of military ethics provides an ideal way to baseline all of these different sources into one comprehensive yet simple document. Snider noted “the Army has too many statements of its ethic. What the Army lacks is consensus on a single understanding, concise and accessible to all.”²¹ A single uniform code of military ethics would minimize any confusion and uncertainty within the ranks.

Core Values

The Department of Defense and each of the different services have adopted and circulated their own unique core values. Why does the military need a uniform code of ethics if the core values have already been adopted and promulgated? Some may argue that the core values are equivalent to a code of ethics and provide a framework for ethical decision-making. However, the core values themselves can be misleading. Lieutenant Colonel Mark S. Patterson and Lieutenant Colonel Janet E. Phipps concluded that:

While the Army values are imperative, they do little to assist soldiers in making decisions in situations where two or more values seem to clash or when they must choose between the harder right versus the easier wrong, or right versus right.

The Army values by themselves are too general and do not provide soldiers with the framework for making these tough decisions.²²

In other words, in and of themselves, the core values appear ambiguous, simplistic, and do not provide enough detail as an ethical framework. Matthews reiterates this point:

Finally we should emphasize again that this type of ethic – consisting of merely a brief set of one-word values, virtues, and traits – does not attempt to set forth explicit ethical principles tailored to address questions of right and wrong within the broad professional milieus as do the conventional codes of conduct governing other professions.²³

The core values are clearly not sufficient to serve as a code of ethics.

With the exception of the Navy and Marine Corps, the core values are different for the Department of Defense and each of the services. As a part of the Department of the Navy, the Marines have adopted the Navy's core values. Colonel Mark Mattox emphasized "The first thing one notices about these statements is that each is different, even though the uniformed members of these respective organizations are all members of the same executive department and of the profession of arms."²⁴ Does the fact that each service has different core values cause confusion among the ranks, especially since the US military conducts operations in a joint and combined environment? Mattox concludes with a recommendation that the Department of Defense and the services re-evaluate their core values to determine if they really reflect the service's core values and whether or not there should be differences between them.²⁵ A uniform code of military ethics would supplement the service's core values by providing a comprehensive framework for ethical decision-making.

The Joint Environment

Each of the different services plays a key role supporting US interests. Yet, the US armed forces do not fight or conduct independent combat operations as a single stand-alone service anymore. Since the passage of the Goldwater-Nichols Act, US armed forces have increasingly been working together in a joint environment. More and more, this combat role is expanding to include coalition forces. It is often difficult enough for US forces from different services to conduct joint combat operations, yet when coalition partners are involved the difficulty increases exponentially.

Combat operations in Afghanistan over the past several years have involved insurgency and counterinsurgency. These operations are significantly more difficult than conventional combat operations because friendly combatants often cannot determine who the enemy is. Likewise, combatants must be prepared to make split-second decisions in life or death situations. As Major Michael P. Manning noted, "Thus in an insurgency or complex contingency, and Soldier inexperience with the nature of the fight, the ethical decision-making process is greatly complicated."²⁶ A uniform code of military ethics would provide the ethical framework for Soldiers to make these tough decisions.

International Partners

The US military increasingly relies on international partners' assistance with combat operations. As Professor Paul Robinson highlighted, "Given the fact that few Western nations now send their military forces on operations independently, the lack of uniformity about what constitutes ethical behavior and how best to educate soldiers is potentially a cause for alarm."²⁷ Ethical dilemmas are rarely simple black and white decisions but often involve shades of gray. These shades of gray increase as coalition forces with different

ethical codes and values become part of the operation. Captain Gerald Faber, *et al.* articulated, “with the expansion of coalition and combined operations, it is critical that the US military have a common code [of ethics] that can be shared with allies.”²⁸

Several US allies and international partners have already adopted codes of ethics for their military services. Faber, *et al.* documented that, “Foreign militaries recognize that a code of ethics is needed for their profession to establish norms for actions and set standards of right and wrong for its members.”²⁹ Lieutenant Colonel Clark C. Barrett provided a review of military codes of ethics from Canada, Great Britain, Australia, New Zealand, and Israel. He concluded that “Each nation has made a solid effort to construct ethical guidelines for its service members.”³⁰ If our allies have already developed a uniform code of military ethics, why is the United States lagging, especially now that professionalism and military ethics are in an increasingly negative spotlight?

Objections to a Uniform Code of Military Ethics

There are several objections to a military code of ethics. Barrett, Professor Richard Gabriel, Matthews, and Lieutenant Colonel Jeffrey Schwandner outline many of them. Some are as relevant today as they were almost 30 years ago.

One of the main reasons against establishing a uniform code is that the services already have the UCMJ, core values, and a variety of other documents dealing with military ethics. As already pointed out, however, the core values are ambiguous and do not provide enough detail. The UCMJ is prescriptive in outlining exactly what the military member should or should not do. In his paper on “Ethics in the US Navy,” Rear Admiral Walter E. Carter recommends that the Navy, “Build a culture of Navy ethics beyond compliance.”³¹ The US military does not need another code that dictates compliance with ‘do’s’ and ‘don’ts’ outlining what should and should not be done. On the contrary, the uniform code of military ethics will provide ideals, goals, and principles for military professionals to emulate and employ under different circumstances. Additionally, the uniform code will tie together all of these other documents.

Another objection is that simply having a code of ethics does not guarantee that members of the profession will actually follow the code. The code would not be a law like the UCMJ and cannot be enforced other than by peer pressure. However, Matthews clarifies, “Any officer seen consistently by his peers and superiors to fall ethically short will find his days in the service numbered.”³² Like other professions, the military will not tolerate those who consistently violate the code of ethics and they will be dealt with accordingly. In many organizations, especially the military, peer pressure can be an effective tool to influence behavior.

Others argue that the code cannot possibly cover every circumstance the members of the profession will encounter. It cannot deal with every ethical dilemma. This objection is too simplistic. As Gabriel explained, “Ethical codes are not the same thing as legal codes. Ethical codes specify in general terms what soldier ought to do and permit the individual to choose which observations he or she will observe.”³³ Matthews cited this same response to this objection. Lieutenant Colonel Brian Imiola and Major Danny Cazier also highlight,

“First, no list of rules could ever be long enough to capture all of the things that we should and should not do. Second, any list of rules – if enforced – really just approximates another *legal* code.”³⁴

Some argue for the publication of more than one code of ethics. Professors Nicholas Fotion and Gerard Elfstrom postulated that several codes of ethics are needed. “The exact number of codes is not what is at issue. What is, is that having just one code is too few and ten is too many since, once again, one code has to bear too high a burden, while ten would make things too confusing.”³⁵ Fotion and Elfstrom suggested an internal code for peacetime operations, a fighting code for combat operations, and a prisoner’s code for use when taken prisoner. The adoption of several codes would only add confusion and uncertainty to an environment already overloaded with documents about military ethics. Colonel Anthony Hartle argued, “My own personal view is that a variety of codes would de-emphasize the importance of each, a result that would not serve well the purposes of the military.”³⁶

There are some military professionals who support each service adopting its own unique service codes of military ethics. Hartle postulated, “A further question is whether each service should have its own formal ethical code, or whether one code should apply to all components of the armed forces.”³⁷ Army Chief of Staff General Raymond Odierno proposed a draft Army Ethic in *The Army Ethic White Paper* released in 2014. This is clearly a step in the right direction. Nevertheless, service codes will only ‘muddy the waters,’ create confusion, and add to the morass of documents that already deal with military ethics. Besides, each Service already has their core values. Today’s military fights in a joint environment. There should be one uniform code of military ethics for the joint force. Colonel Darryl Goldman argued, “More codes will not help. By the time the loaded ethics-related statements are defined with some consensus, the resultant code is little more than indefinite platitudes with no means of exacting compliance.”³⁸ Manning suggested, “that the US military as a whole embrace the ethical values shared by all services.”³⁹

Way Ahead

The Department of Defense in conjunction with the individual services must make a commitment to develop and implement a uniform code of military ethics. “The adoption of a ‘code of military ethics’ is no easy task for a military that has existed for more than 200 years.”⁴⁰ However the DoD must take the initiative and get the process started.

Lieutenant Commander W. Spencer Butts developed a framework consisting of four simple elements to reinforce the code once it is developed. He referred to it as the four E’s: Education, Example, Enforcement, and Evaluation.⁴¹ They are explained as:

- **Education** – As Carter documented, “it is possible, for instance, for sailors to matriculate from accession source to retirement without having had more than basic ethics training over the course of an entire career.”⁴² This is unacceptable. The uniform code of military ethics must be reinforced throughout a military professional’s career and milestones established within the PME schools.
- **Example** – Leaders of all ranks must set an example and support the code. “The senior officers of the profession must support the new code by their actions, and

they can be certain that their actions will be closely observed by their subordinates who are searching for clues as to how to behave themselves.”⁴³ Without their support, the effort to establish a uniform code of military ethics will likely falter.

- **Enforcement** – Enforcement is essential to the code’s success. Barrett noted, “For an Army ethics to be effective it must be backed by an organizational commitment to non-toleration for violations.”⁴⁴ Violations must be dealt with swiftly.
- **Evaluation** – The military must continue to assess the code and make improvements over time. Leader involvement is vital to this assessment. This process will take time to implement. Butts stressed, “there must be a means to continually improve the process and that comes in the form of evaluation.”⁴⁵

Conclusion

A uniform code of military ethics will not solve all of the ethical problems in the US armed forces overnight. However, the Department of Defense and each of the services are devoting a lot of resources and time to improving the ethical climate of our US armed forces. The establishment of a uniform code of military ethics is a first step toward that improvement. Now is the best time to make it a reality.

Author’s Note

The views expressed in this essay are those of the author and do not necessarily reflect the official policy or position of the Department of the Navy, the Department of Defense or the US Government.

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Chapter 9

***Jus ad Bellum*, Conscience, and the Oath of Office: The Problem of Selective Conscientious Objection in the United States Military**

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I refuse to be party to an illegal and immoral war against people who did nothing to deserve our aggression. My oath of office is to protect and defend America's laws and its people. By refusing unlawful orders for an illegal war, I fulfill that oath today.

– Lieutenant Ehren K. Watada, US Army

The Problem

This paper seeks to shed light on an aspect of moral decision-making that has not received the attention it deserves in military circles; namely, the idea of the legitimacy of *selective conscientious objection* – that is to say, not the objection to military service in the abstract as a requirement of conscience, but *the objection to serve in a specific war as a requirement of conscience*. American society in general, and the American military services in particular, distinguish clearly between persons who express a religious or moral objection to serving in the armed forces and those who do not.¹ Over time, federal legislation has provided for the protection of the freedom of conscience of individual citizens who refuse military service, especially for those who object to the use of deadly force for political purposes – a common definition of war. This protection has exempted some objectors from service in military forces or, alternatively, from service in combat positions that require the use of deadly force. However, in most cases, the nation does not exempt these citizens from national service entirely. Often, conscientious objectors will be required to serve the nation in a non-combatant capacity, either as members of the armed forces, or in a different capacity, performing some type of civil service to the nation.

This has not always been the case. Even a cursory review of historical precedents demonstrates that the recognition of the right to follow the dictates of individual conscience has come about only gradually and against much opposition. Indeed, there have been many people who have suffered ridicule, abuse, and imprisonment for their pacifist beliefs in this country.² Due to their efforts, and those of their advocates, today the United States has a well-established mechanism that allows conscientious objectors to follow the dictates of their conscience peacefully within the laws of the nation. What has not been generally recognized, and has indeed continued to be punished under the law, is the right to *selective objection*; in other words, the right to serve in the military on a *conflict by conflict basis according to the dictates of one's conscience*. This is a difficult problem because, as defined in current law and military regulations, the granting of conscientious objector status is an all or nothing proposition; either the person is against military service in general and/or killing in war in particular, or he/she has no such objections.³ Furthermore, objections declared *a priori* before the outbreak of conflict have a better chance of being favorably considered

that those declared *a posteriori* after a conflict is in progress. In addition, little provision is made for the reality that individuals and their moral consciences change and grow so that what may have been acceptable at a previous time may well become genuinely unacceptable later.

The issue of selective conscientious objection is relatively new compared to traditional objections to service in any war or to acting as a combatant in war. These traditional forms of conscientious objection arise from stable religious or philosophical positions that form part of a person's core beliefs and life stance. Indeed, prospective conscientious objectors must demonstrate that they have held and continue to hold such stable moral positions and are not merely refusing to serve out of cowardice or self-interest.⁴ In contrast, selective conscientious objection is not an objection to war as such or to killing in war; rather, it is a position taken with respect to a specific war or conflict which is deemed to be ethically unacceptable or immoral by the individual – not the state.

Historical Background

While there have always been religious conscientious objectors in the United States, the issue of selective conscientious objection came to the fore in the social upheavals resulting from the Vietnam War. The growing unpopularity of the war and the questionable moral authority of the South Vietnamese Government were issues that led some to freely declare against it. Many young Americans sympathized with the emerging postcolonial national liberation movements and saw the Viet Cong as idealized “freedom fighters.” Others, most notably heavyweight champion Muhammad Ali, simply had no quarrel with the Vietnamese Communists. As he famously put it: “No Viet Cong ever called me nigger.”⁵ Ali's case became a *cause célèbre* for anti-war activists, civil rights activists, and others opposed to the war. He was suspended from professional boxing, stripped of his titles, and sanctioned, but his case was ultimately dismissed at the Supreme Court on a technicality.⁶ I suspect that such artificial dismissals on legal technicalities have provided, and continue to provide a convenient means to side-step the real issues and avoid reaching a precedent-setting decision. Although he was the most famous selective objector, Ali was not the only one. Two other plaintiffs, Guy Gillette and Louis Negre, had their claims to selective conscientious objection denied by the Supreme Court of the United States.⁷ In both cases the primacy and autonomy of the individual conscience was denied based on rigid views of moral choice, legal categories, and utilitarian concerns. As we shall see, utilitarian concerns loom large in the US military's concern that, if approved, selective conscientious objection may pose serious organizational problems.

Enter the All-Volunteer Force

To complicate matters, the recognition of a right to selective conscientious objection may have become more difficult after the adoption of the all-volunteer force in the United States in 1973. The logic of this argument flows from the fact that, since every member of US military forces has volunteered for this duty freely (as specified in the oath of office taken by every service member upon induction), each volunteer has thus given up his or her right to object to service in *any war or conflict, declared or undeclared*, when he or she is so

ordered to participate in it by the chain of command. In other words, the decision to enlist or to accept a commission as an officer in the armed forces of the United States commits the person legally to serve in any way deemed proper under US law. The language of the current oath of enlistment and oath of office for commissioned officers is as follows:

I, __, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God. (Title 10, US Code; Act of 5 May 1960 replacing the wording first adopted in 1789, with amendment effective 5 October 1962).

I, __ (SSAN), having been appointed an officer in the Army of the United States, as indicated above in the grade of _____ do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter; So help me God. (DA Form 71, 1 August 1959, for officers.)⁸

While this conclusion is entirely logical *legal thinking*, it does not necessarily follow that it is *moral thinking* – even when thinking inside the frame of reference provided by the idea of *jus ad bellum*; that is, under the idea that, in order to go to war, a particular war must be first be deemed a *just war*. Furthermore, what the leaders of a nation-state may deem to be just may be so because their thinking is invested with personal views and biases of what constitute the “national interest,” an idea arising from the view that national policy must be driven by national interest. However, as any moral philosopher or ethicist would readily admit, *national interest per se, is not a moral category* and thus decisions based on this idea do not carry any weight in the more stringent moral environment framed by the idea of *jus ad bellum*. Indeed, although the idea that the “national interest,” however defined, is now commonly accepted by many schools of foreign policy, it cannot form the basis for an ethical argument. Indeed, it was this very idea – that the state and its leader could operate independently of moral considerations – that made Machiavelli such a controversial and even scandalous writer in his own time. Writing from within the context of a Christian society (Christendom) his ideas seemed at best amoral and at worse perverse to rulers who were concerned with preserving at least the *appearance*, if not necessarily the substance, of morality and justice in the context of war and peace. The contemporary world has no need for such niceties; although it is now customary in the West to invoke some humanitarian need, or the intent to preserve human rights, as a *casus belli*. The individual conscience, on the other hand, does not necessarily embrace an amoral world view and may require moral justifications for its actions. Thus, for the conscientious individual who places moral imperatives and personal conscience above expedient or practical considerations, the problem of whether or not a given situation justifies the decision to go to war is real and cannot be

wished away or subsumed under either legal argumentation or the requirements of expediency.

Granted, in today's globalized world where there is no longer any universally recognized religious consensus, it is not possible to argue from any single moral point of view – with the possible exception of arguing from the concept of a natural morality derived from natural law.⁹ But even the existence of this concept is not generally accepted. However, for the purposes of the present inquiry we will frame the problem within the bounds of traditional, i.e., Christian, just war theory – particularly within the framework provided by the concept of *jus ad bellum*. This is justifiable in light of the fact that despite many attempts to secularize the ideas behind just war theory, they have their philosophical roots and find their justification in Christian morality.¹⁰ According to just war theory, the concept of *jus ad bellum* must meet certain specific well-known criteria.¹¹ Failure to meet them would, as a minimum, constitute ample cause to doubt the legitimacy of deadly military action.

Unless we adopt a legalistic and mechanistic mentality about morality, it is impossible to accept that a free individual would abrogate his or her innate right to be and act as a free moral entity just by swearing an oath of induction to the state. This abrogation would also negate the free moral agency expected, and even required, by members of the United States' armed forces.¹² This represents a real problem for all those who advocate a moral, or at least a legal use of military force. Indeed, adherence to the concepts embodied in "the law of war" requires the level of moral discernment possible only through the exercise of an independent moral agency capable forming judgment based on ethical reasoning. On the other hand, the current practice of subordinating morality to legality upon induction into the military – something which at first glance would seem to be a very convenient principle, one which would also fit nicely the requirements of political expediency – would, on careful examination, be tantamount to an affirmation of the infamous "Nuremberg defense" – Eichmann's famous "I was just following orders" excuse for mass murder. In other words, through the performance of a mechanistic ritual, the individual conscience is bound to follow the orders of the current established government – *a government which by its very nature and constitution is not a moral entity*. These orders, provided that they are legal, are then taken as a compelling moral imperative that excuses the individual, now reduced merely to an agent for executing orders, of any moral reflection and presumably of any moral responsibility *ad bellum*. This legalistic obedience to orders is not morally acceptable in most ethical and religious systems and has been discredited by international law in specific cases. However, this assumption is still at the root of the legal view that the state is the only competent authority to decide issues of *jus ad bellum*. Such an argument may be philosophically unsustainable. This is particularly the case when the state is a self-defined secular entity.

The discussion of the problem presented by the failure to recognize the legitimacy and even the necessity of the right to selective conscientious objection lead to the following conclusions: one, subsuming and subordinating the individual moral conscience to the decisions of a collective, impersonal, and necessarily amoral secular state does not respect the idea of the primacy of conscience as the foundation for individual human freedom as expressed through individual decision-making and purposeful action based on the moral

judgment of conscience; two, abrogation of the validity of individual moral judgment based on an informed conscience works against the avowed necessity which the American military establishment places on the need for the judicious and purposeful use of force *in bello* as the moral situation and the legal framework provided by the law of war and the specific rules of engagement require. In other words, *if* the judicious and purposeful use of force is taken as the foundation for the ethical (and lawful) conduct *in bello* and as a *sine qua non* for the responsible use of force, and *if* such moral judgment can only be produced by an informed moral conscience, then Soldiers and officers can never be just the theoretical “instruments of the state” which is what they ideally should be under the premises of the functional utilitarianism which governs their behavior *ad bellum*. Obviously, you cannot simultaneously have morally-informed Soldiers who apply violence with purpose and discrimination *in bello* if you require them to be moral automatons *ad bellum*. This is because a practicing moral conscience cannot, by its very definition, be “turned off and on” at the convenience of the state. A working conscience in this sense is analogous to a working intellect; that is, a person cannot anymore “turn off” his or her conscience just as she or he cannot decide “not to think.” Therefore, it is logically inconsistent and practically impossible to restrict conscience to functioning *only* when judging situations *in bello* when its agency is not admitted when examining arguments *ad bellum*. Thus, just as the individual conscience must be allowed its fundamental freedom when examining the reasons and methods that are morally permissible *in bello*; it must also be able to exercise its moral function *ad bellum*.

In the light of the present conflicts which have been variously named “War on Terror,” “The Long War,” and various “operations” which were triggered by a diffusely defined and poorly focused moral outrage at the 9/11 terrorist attacks, it is imperative to recognize the primacy of individual conscience to judge each specific moral situation on its own merits. In attempting to silence all dissent and even the discussion of what constitutes legitimate defensive war, the purportedly liberal democratic state runs the risk of descending to the level of those who have attacked it. The first step in such a process would be to deny individuals their moral autonomy. “Either you are with us or are with the enemy!” Even those who accept a realist view of policy (using the word realist as a policy term derived from *Realpolitik*) and who deny that the state has any claim to a moral purpose would be ill-served by attempting to assert complete state authority over individual morality even on the somewhat pedestrian grounds that this would constitute a diminution of personal freedom.

An examination of the roots of personal morality, the avowed social contract in the part of the liberal democratic state to allow for freedom of conscience to its citizens, and the need of military forces which claim subordination to civilian authority and moral legitimacy, all argue for a recognition of the right for selective conscientious objection, based on a careful evaluation of each war or proposed war by the moral conscience of an individual cannot be denied. Obviously, recognition of this right could cause potential turmoil within the state and even more so within the military establishment – at least until proper mechanisms are identified to deal with this. But failure to acknowledge the primacy of conscience, particularly for a military establishment that tries to describe itself as moral and that advocates “moral leadership” can only be done at great peril to its credibility and

legitimacy and even more seriously, to the society it purports to serve, and to the causes it seeks to promote.

Notes

1. “Conscientious objection: A firm, fixed and sincere *objection to participation in war in any form* [Our emphasis.] or the bearing of arms, because of religious training and belief. Unless otherwise specified, the term ‘conscientious objector’ includes both 1-0 and 1-A-0 conscientious objectors.” *a. Class 1-A-0 conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status. *B. Class 1-0 conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form. *Army Regulation 600-43 Personnel-General Conscientious Objection*, (Washington, DC: Department of the Army, 2006), 27. http://armypubs.army.mil/epubs/pdf/r600_43.pdf (accessed 30 March 2015).

2. A particularly striking case is that of Ben Salmon, a Roman Catholic, who refused to serve in WWI and wrote a very honest letter to President Woodrow Wilson explaining his reasons. His letter reads in part: the lowly Nazarene taught us the doctrine of non-resistance, and so convinced was He of the soundness of that doctrine that he sealed His belief with death on the cross. . . . This letter is not written in a contumelious spirit. But, when human law conflicts with Divine law, my duty is clear. Conscience, my infallible guide, impels me to tell you that prison, death, or both, are infinitely preferable to joining any branch of the Army.” Salmon suffered greatly for his decision of conscience including, prison, solitary confinement, hard labor, and commitment to an insane asylum. His story is not atypical of conscientious objectors in the US. <http://www.catholicpeacefellowship.org/nextpage.asp?m=2524> (accessed 30 March 2015).

3. Department of the Army, *AR 600-43: Conscientious Objection* (21 August 2006). Section 1.5 Policy includes the following directive: a. Personnel who qualify as conscientious objectors under this regulation will be classified as such, consistent with the effectiveness and efficiency of the Army. However, requests by personnel for qualification as a conscientious objector after entering military service will not be favorably considered when these requests are: (4) *Based on objection to a certain war.* [Our emphasis.] Department of the Army, *AR 600-433: Conscientious Objection*, http://armypubs.army.mil/epubs/pdf/r600_43.pdf (accessed 30 March 2015), 1.

4. “Conscientious objection: A firm, fixed and sincere objection to participation in war in any form or the bearing of arms, because of religious training and belief.” AR 600-43, 27.

5. “Why should they ask me to put on a uniform and go 10,000 miles from home and drop bombs and bullets on brown people in Vietnam while so-called Negro people in Louisville are treated like dogs and denied simple human rights? Man, I ain’t got no quarrel with them Viet Cong. No Viet Cong ever called me nigger.” <http://www.bbc.com/sport/0/boxing/16146367> (accessed 30 March 2015).

6. For a concise overview and full text of the Supreme Court decision on Muhammad Ali see http://www.aavw.org/protest/ali_alivus_abstract08.html (accessed 30 March 2015).

7. For the text of the *Gillette v. United States* decision which was based on selective conscientious objection see <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=401&invol=437> (accessed 30 March 2015). For the text of the *Gillette v. United States* after it was consolidated with the *Negre v. Larsen* case see <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=401&invol=437>, (accessed 30 March 2015).

8. US Army Center of Military History, “Oaths of Enlistment and Oaths of Office,” <http://www.history.army.mil/html/faq/oaths.html> (accessed 26 March 2014).

9. The concept of natural law has its roots in Graeco-Roman ideas of civic morality and later on Christian interpretations of the same. Since it is founded on premises which are part of the cultural context in which it arose it is not generally accepted in today’s multicultural environment.

However, many so-called human rights are derived from natural law even though this is not necessarily acknowledged. For an objective overview of the concept of natural law from the philosophical perspective see “The Natural Law Tradition in Ethics,” *Stanford Encyclopedia of Philosophy*, 2011. <http://plato.stanford.edu/entries/natural-law-ethics/> (accessed 30 March 2015).

10. For a thoughtful discussion of the history of the Just War Tradition, its Christian roots, and its applicability to the contemporary world see David D. Corey and J. Daryl Charles, *The Just War Tradition: An Introduction*, (Wilmington, Delaware: ISI Books, 2012).

11. These criteria have been defined in classic just war theory as: just cause, right intention, proper authority and public declaration, last resort, probability of success, and proportionality. “Just war theory insists *all six* criteria must each be fulfilled for a particular declaration of war to be justified: it’s all or no justification, so to speak. Just war theory is thus quite demanding, as of course it should be, given the gravity of its subject matter.” “War,” *Stanford Encyclopedia of Philosophy*, 2005. <http://plato.stanford.edu/entries/war/> (accessed 30 March, 2015).

12. An Army information paper written by the Center for the Army Profession and Ethic (CAPE) calls for “Army Professionals to seek to discover the truth, decide what is right, and to demonstrate the *competence, character, and commitment* to act accordingly.” Information Paper on FY 15-16 *America’s Army – Our Profession* Theme, “Living the Army Ethic” written by Patrick A. Toffler. <http://cape.army.mil/repository/aaop/education-and-training/CY13-AAOP-Info-Paper.pdf> (accessed 30 March 2015).

Chapter 10

To Support and Defend

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Several years ago, the Army recognized the need to embark on a period of deliberate introspection of the most basic nature of its core identity. The Army stood up the Center for the Army Profession and Ethic (CAPE) to spearhead this effort. Currently CAPE is in the process of articulating the Army ethic. The Army's ethic is not something new; it has evolved since the Army's early days and draws from multiple sources including the just war tradition, the Declaration of Independence, the US Constitution, The Law of Land Warfare, the oaths of office, and the Army values, to name a few. These sources embody the generally stable and enduring concepts that empower and inform the functional framework of the profession. The Army profession campaign evolved as a result of the morally corrosive effects of projected combat and the implications to the force. However, a larger challenge to the Army's professional identity is the ever-changing American societal culture that increasingly fails to understand or even rejects many of the core tenets of the traditional sources that contribute to the Army's ethic.

Since we draw our Soldiers from American society, we see the effects of this growing disconnect in our Soldiers. A few examples of the effects of this trend are the ever-increasing number of American youth who are unqualified for military service, the high number of suicide and sexual assaults in the services, the declining number of elected representatives who have served in the military, and the trend of today's youth to approach life with an individualistic versus community orientation.

The Erosion of Trust Between America and Its Army

Over the past several decades the military has become elitist and professionalized as the result of the culture gap with society and the consequences of the all-volunteer force (AVF). While the decision to abolish the draft results in a highly competent military, it makes it more insular, to the point where some members see themselves as superior to the society and even to the elected representatives under whom they serve. In a 1997 article, "The Widening Gap Between Military and Society," Thomas Ricks discusses how a contempt for modern American culture has driven military personnel to feel increasingly alienated from the nation. Ricks wrote this piece through the lens of a post-Cold War military of the 1990s.¹ This was the force designed to fight high intensity set piece battles and demonstrated its overwhelming superiority against Iraq in 1991. The military then endured huge budget and personnel cuts while reluctantly engaged in peacekeeping missions in Somalia and the Balkans. Although off on his prediction that the military was poised to revert to a garrison status, much of what Ricks described is still evident, even more so today, after

our military has been heavily committed to combat operations for the past 13 years. This paper examines two facets of the growing gap between American society and the military. This gap is fostering an erosion of trust between the two. The first facet is the moral divide between a selfless military culture and the growing self-centered individualism of American society. The second facet emerges largely from the unintended consequences of the AVF which is alienating our military from American society and government.

In 2008 the Army established the Army Center for the Professional Military Ethic to lead a campaign to invigorate and educate the force about the Army profession. In 2014, the Secretary of Defense named Rear Admiral Margaret Klein as the department's Senior Advisor for Military Professionalism. Her job is to work with and coordinate all DOD activities and actions that focus on ethics, character, and competence.² In 2013 The Army published ADRP 1, *The Army Profession*. This publication discusses the characteristics of a profession and argues why the Army is, and must remain, a profession. ADRP 1 describes the five essential characteristics (military expertise, honorable service, trust, esprit de corps and stewardship of the profession) the Army must possess in its culture to fulfill its professional obligations to the country.³

Trust lies at the heart of these five characteristics and forms the relationship Army members must maintain in order to fulfill their strategic roles. Trust is essential within the Army, between the Army and its civilian leadership, and with American society. As described in this doctrine, the Army shoulders the responsibility for establishing and maintaining these trust relationships. However, one might question "how do these entities demonstrate and build trust with the military, and why is that important?" The Army's current profession campaign seems to address only part of this trust relationship. The Army, and consequently the nation, are facing significant challenges that threaten its trust relationships with the nation's leaders and the American people.

Foundations of Army Culture

The seeds for the British colonization of America grew out of the quest for religious diversity and freedom. In the early 1500s Martin Luther, father of the Protestant Reformation, challenged the traditions and authority of the Catholic Church. This movement spawned the formation of numerous Christian sects throughout Europe. Followers of these new groups frequently faced state persecution, driving many of them to seek religious freedom and better opportunities in North America. Beginning in the early 1600s the 13 American colonies were founded and the beginnings of our nation and its culture were forged. The early settlers were largely believers in the Christian God and relied on the Bible as their basis for wisdom and moral living. By 1700 church attendance was estimated to be 75 to 80 percent of the population.⁴ Today that number is believed to be about 20 percent.⁵ Early Americans were resourceful, independently minded and resilient. As the colonies matured and moved towards independence from Britain, their culture was largely described and codified within the founding documents. The Declaration of Independence describes the right to form a "more perfect union" in order to create a society that valued "life, liberty and the pursuit of happiness." The Bill of Rights created the blueprint for individual liberty in the new nation. The Constitution described the three branches of the federal government and

their responsibilities. It also limits the power of the federal government and introduces a system of checks and balances that limit the accumulation of too much power in too few hands or without accountability by the other branches. Although our country promoted individual freedom as a founding principle, with freedom came certain responsibilities of civic engagement and a willingness to protect the country during times of conflict.

George Washington reinforced this sense of duty in the Continental Army. One of his greatest victories was over his own officers during the Newburgh Conspiracy of 1783. A disgruntled band of officers threatened to mutiny due to their frustration with their lack of pay. Washington's impassioned plea of loyalty to the Army and the country averted a potential disaster during the Revolutionary War.⁶ This incident is widely regarded as one of the hallmarks of Washington's sense of selfless service that is ingrained in military culture and required of Soldiers.

Along with selfless service the Army established an objectivist perspective that further defined its culture. In order to maintain an effective and ethical fighting military, doctrine stressed values and standards of conduct that placed the individual needs below the good of the organization and the welfare of the country. The ideal of self-sacrifice became the foundational concept that enabled Soldiers to endure hardship, privation, and, if necessary, death.

Contemporary Moral Issues

Today our cultural institutions exert far less influence on America's youth. Christian Smith describes this phenomenon in *Lost in Transition*. His research is based on the social development and perspectives of 18-23 year olds, a group he names "emerging adults."⁷ A product of their environment, upbringing and social enculturation, he notes the passage to adulthood "has become more confusing and less directed by the cultural and institutional instructions and boundaries."⁸ Our cultural institutions have themselves changed, they no longer promote traditional values or even encourage our young people to confront their moral beliefs in rational ways outside of their own experiences and opinions. Today's young Americans, having been provided fewer boundaries and guidelines, are extending their youth well past that of previous generations. We see an emerging adult population driven by hyper-individualistic beliefs and a shallow sense of what entails the "good life." He notes this group is highly materialistic and largely disengaged from political and civic responsibility. American society has largely failed in many ways to help our young people to critically think about the important questions confronting our country or to adopt a sense of responsibility to something larger than themselves.

We have all heard the popular slogans "do the right thing" and "what would Jesus do?" Unfortunately, for many Americans these clichés betray a lack of understanding regarding what morality is and where we find the basis for moral decisions. Moral clarity is a key requirement for Soldiers because it is so closely linked to the concepts of duty and selfless service. Oftentimes making the correct moral decision means sacrificing one's own interests. In his interviews with emerging adults, Smith describes pervasive moral confusion. His findings point to a general lack of understanding about morality to include the source of moral laws, how to think systematically about moral decisions, or for some, why it would

matter to even consider the subject. One third of his test subjects believe morality is simply a matter of personal preference, something that merely exists in an individual's head at a given moment. These emerging adults thought it was wrong to challenge another person's moral choices and they were unaware of any external tools they could consult to help clarify their own beliefs. When interviewed, these individuals were unable to coherently discuss subjects about right and wrong or justify their positions. The other two thirds of subjects were not as individualistic, he describes them as "moral agnostics or skeptics."⁹ When questioned, this group generally possessed a firmer grasp of morals, but when pressed regarding the basis of their knowledge or judgment they found it difficult to stick to a moral claim. Again, few could articulate a moral standard from which to judge right from wrong.

Given that the military operates in morally complex and confusing settings where Soldiers must quickly make life and death decisions, moral judgments matter. The military must operate on clear moral principles that ultimately center on duty and service. Today's social institutions are failing to expose, much less ground, our children in values consistent with a military ethos or even give them the thinking skills needed to make rational moral judgments.

Alienation From Society

Ricks discusses similar issues in his article. Service members who had recently completed initial training and returned home described a feeling of being lost and unable to relate to their old friends and neighborhoods. His article is peppered with quotes that point to a feeling of alienation and contempt for what they saw outside the military:

You look around and notice that a lot of civilians are overweight, and a little sloppy.

People were drinking and their kids were running around aimlessly. You felt like smacking around some people.

Upon returning home one young Marine commented, "I didn't know how to act. "They said, what do you want to do?" I'd say, "I don't know," I didn't know how to carry on a conversation."

Retired Marine Lieutenant General Bernard Trainor said, "When I got out of boot camp, in 1946, society was different. It was more disciplined, and most Americans trusted the government. Most males had some military experience. It was an entirely different society – one that thought more about its responsibilities than its rights."¹⁰

In his 1961 inaugural address, John Kennedy challenged the country to "ask not what your country can do for you – ask what you can do for your country."¹¹ The idea of public service corresponds with Lord John Moulton's "Obedience to the Unenforceable." This concept is tied to a Judeo-Christian cultural background which enforces the belief that God is always watching, even when no one else is. This concept helps people stay obedient to what they know is right when there is no other mechanism in place to enforce obedience.¹² John Kennedy's speech in 1961 was appealing to our sense of obedience to the unenforce-

able. Today, however, many people believe that America runs on a very different set of values. Over the last fifty plus years a shift in terms of morality has become apparent; however, it can also be seen in two other important facets of life – our political and legal landscape.

Political and Legal Shifts in Society

As America grew, so did the structures of government and business. This growth drove these institutions to become more influential, while at the same time becoming more detached from and inaccessible to the public. Along the way these institutions were concentrating power and wealth in fewer hands. Over time, big government, big business, and now the media have become institutions subject to public suspicion and mistrust. This phenomenon is reflected in polls that measure the public's trust of its major institutions.¹³ In fact, Smith describes 49 percent of emerging adults as uninformed, apathetic, or distrustful of government. He largely attributes this disconnected attitude toward government due to their cynicism toward our political leaders and the political system. Another 10 percent feel disempowered, believing their voice is unheard and they lack an ability to influence the system.¹⁴ The growth and power of the federal government fuels these perspectives.

Beginning around the turn of the 20th century, progressives in government have worked hard to limit the inequities perpetrated by big business on its workers and consumers. Their methods to achieve this end have mainly been through taxation and regulation which has concentrated their own power. Consequently, while the government has ostensibly concerned itself with protecting the public against business excesses, its own power and corruption have been much more insidious and difficult to contain. Politics in America has largely become an endless campaign cycle driven by unimagined dollars, time, and energy spent on congressional and presidential elections. We see far less effort and enthusiasm devoted to meaningful work, especially among political rivals, to solve the nation's most difficult and important problems. Study any of the significant issues our country faces, such as the tax code, environmental law, education, or health care, and we usually discover volumes of stifling bureaucracy that has paralyzed leadership and blocked action that might hope to result in any meaningful change or reform.

America has largely become an individualistic society where each person's perceived rights have created an environment that trumps First Amendment protections. Free speech is often socially regulated in order to avoid someone's perceived offense. We have created a self-imposed censorship in order to accommodate our feelings. In doing so we limit honest and healthy debate. Consequently, it has become increasingly difficult to engage in fair and open discussions on many of the important and contentious topics in our society. This tends to polarize people while discouraging the very means for understanding the truth and achieving fairness. Teachers are afraid or unprepared to engage their students in critical thinking about controversial issues for fear of sparking a firestorm of emotions in the classroom, and complaints and lawsuits from offended parents. Too often we now turn to the courts to settle our civil disagreements with an ever growing eye to secure a disproportional monetary settlement to satisfy a self-centered view of justice.

This trend of lawsuits for dollars is further evidence of how our culture is moving toward a more self-centered society. One case which illustrates this trend is the Washington, DC judge who sued a dry cleaner for \$54 million for losing a pair of pants. In order to avoid a court case, the owner offered the judge \$12 thousand to settle out of court, but the judge refused. Despite the judge's plea citing emotional damage, the case was decided in the defendant's favor two years later.¹⁵ Although this is one of the most ridiculous and overblown examples, frivolous lawsuits have become imbedded in the culture, costing all Americans, due to court and legal expenses, insurance rates, time, and loss of work. The problems noted within our political and legal systems are indicators of how our nation as a whole has become a "me centered" society as we have strayed from our original values.

These trends certainly strain the ethical fabric of our culture and represent a glaring contrast between current societal values and those of the military, which espouse selfless service. Our young people, some of whom will eventually become Soldiers, are products of this society. When confronted with a starkly different military ethos, a sense of isolation grows and strains the trust bond with American society.

The All-Volunteer Force and War

We will now examine the impact of the AVF on the trust relationship between America and its Army. Some historical context will help frame this issue. Throughout most of America's history, the Army was largely manned by citizen Soldiers. The founders were suspicious of a large standing Army, so none was maintained. Consequently, the Army existed as a relatively small force that was expanded, sometimes dramatically, to meet wartime needs. Until the dawn of the 20th century we fought wars of survival, either to gain and maintain independence, to preserve the Republic, or to defend life and property within our borders. During the past 100 years, the country has fought two world wars, two major but limited regional conflicts in Eastern Asia, a "Cold War" against the former Soviet Union, and, most recently, a series of extended conflicts in the Middle East and Central Asia.

During the years leading up to America's involvement in the two world wars, we were a deeply isolationist country. Protected by vast oceans, we had the luxury of limiting our involvement to providing materiel support to our allies and letting them do their own fighting. However, after the initial years of both wars we were eventually drawn into the fight. During this era we followed our Constitution; Congress declared war, the president waged war, and the nation mobilized to man, equip, and train the military. We used the draft to raise the required troop strength needed to supplement the standing Army. Today we would say the nation was "all in" on the war effort. We considered these wars of necessity, particularly World War II. These were wars we had to win or our nation's survival would be at risk. The costs were high in both human and material measure; the pace, scope, complexity, and violence of these conflicts were enormous by any standard. Our citizen Soldiers fought alongside allies from around the world, using new and different weapons and tactics. Casualties were in the hundreds of men killed each day. However, by today's standards and particularly given the scope of the conflicts, our time of involvement in each war was quite short: about one and a half years in World War I and a little over three and a half years in

World War II. In the end, America and her allies prevailed, we won the wars, peace treaties and surrender documents were signed, and the nation celebrated.

The Vietnam War marked a turning point in American military history. No other conflict drew so much criticism and protest. We failed to develop a winning strategy, the war dragged on for many years, and casualties surpassed 50,000. During the war the draft had become increasingly unpopular, largely because so many of the nation's elites and privileged class were granted deferments. By 1973, at the end of our involvement, the Army was in shambles. Race relations were terribly strained, drug use was common, discipline was poor, and the non-commissioned officer corps was depleted. This became the backdrop for the adoption of the AVF. Something was needed to move the Army toward a more professional military organization. Adopted in 1973, the AVF began to rebuild and modernize. By the spring of 1991 we could, without doubt, point to its validation after a swift victory in the Gulf War. This modernized, well trained and disciplined force performed better than all predictions. With its six-week air campaign and blitzkrieg-like 100 hour ground war, the American military seemed all but invincible. We had entered the age of quick, decisive victory with minimal casualties or pain. Ten years later we would embark on two protracted wars that would yield far different results, and should now make us reevaluate our current civil-military contract we call the AVF. Richard Nixon's decision to adopt the AVF was largely based on the findings of the Gates Commission of 1970, named after its chairman former Secretary of Defense Thomas Gates.

Although the commission recommended adopting the AVF, it also reported five cautions that could potentially harm civil-military affairs: the isolation of the military from society and the threat to civilian control; the decline of civilian respect; overrepresentation by ethnic minorities and the low income of society; an erosion of society's concern with foreign policy affairs; and an inclination for the country to embark on "military adventurism."¹⁶ In light of our experience since 2001 most of these cautions seem prophetic. A number of unintended consequences of the AVF are particularly damaging to the trust relationship between the military and society.

Today's participation in the military as a percentage of the population is at an all-time low since World War II. This is not just a phenomenon associated with the current draw down that began after the end of combat operations in Iraq. In 2011, The Pew Research Center reported that even during the height of our involvement in Iraq and Afghanistan this percentage continued to decline and now stands at below 0.5 percent of the total population. These facts are not lost on the military. The Pew survey reported that 84 percent of post 9/11 veterans believe the American public has little or no understanding of the problems faced by the military. 71 percent of Americans also believe that they don't understand the problems our military faces.¹⁷

To a certain degree, the attitude of politicians using the AVF can be summed up in a quote by former Secretary of State Madeleine Albright, "What's the point of having this superb military you're always talking about if we can't use it?"¹⁸ With the professionalization of the military, it becomes a tool for politicians to use to promote their own agenda, especially the president. As fewer American families are affected by having their sons and

daughters subject to death and injury in combat, there is less hue and cry about the use of the military.

Since the 9/11 attacks we fought two wars uninterrupted for 13 years, while at the same time placed no expectations of our society at large to change their lifestyle or contribute to the war effort in any meaningful or sacrificial way. This tended to exacerbate the gap between the military and society. Unless you had a serving family member, you faced no risk of dealing with the possibility of death or injury. Since our leaders chose not to pay for the war, we simply went into greater debt to finance it. Consequently, no one really felt much direct pain other than the ones in the fight and their families.

Reinstating a Draft

Had we been in a position to draft more Soldiers, our beleaguered volunteers might not have been required to make so many deployments. Maybe with an equally distributed burden of service, the population at large would have demanded a better strategy long before the surge in 2007. Had we been able to draft Soldiers from the general population, maybe we wouldn't have been forced to significantly lower recruitment standards to meet the operational demands. Many of our senior military leaders, as well as government officials, rightly boast about America's military being unrivaled and the best in the world. They largely attribute this superiority to the AVF and the professional status it claims. However, this professional status has been created at a cost. Our military is disconnected, misunderstood, and isolated from the society it serves and our society seems to have surrendered ownership of important military decisions or awareness of the military's purpose.

Forty years ago about 75 percent of our House members and Senators were military veterans. Today that number is below 25 percent for each House. Along with this declining number, less than 1 percent of our lawmakers have children serving in the military.¹⁹ Some might ask why that would matter; do veterans make better elected officials? That would be a difficult and perhaps rather subjective question to answer and not quite the point to make. Congress has virtually turned over political ownership, oversight, and accountability of military affairs to the president and the Pentagon. Not only have we strayed from declaring war as described in Article 1 of the Constitution, our legislators are unfamiliar with how the military runs, and we've seen no meaningful hearings on policy or wartime strategy.

Congress' primary interest in military affairs lies with the defense contracts and military bases in their districts. This rather cynical perspective is tied to their own political longevity. Given the level of governmental dysfunction, our elected officials display far less interest in affecting operational matters or demanding accountability from military leaders. Former Ambassador to Afghanistan and retired Army Lieutenant General Karl Eikenberry noted how with its "loss of expertise, family ties, and perhaps even interest, Congress appears less inclined to rigorously challenge senior military officers' advice or question their management practices. Indeed, nearly abject congressional deference to the military has become all too common."²⁰

This same lack of military participation is also seen in the other so-called elite enclaves of society. Over time, America has come to recognize certain universities and sub-cultures

as elite. This distinction is largely given to the Ivy League colleges, the legal profession, Wall Street, and Hollywood. This small group wields tremendous influence at various levels of society, including government. However, they have virtually no contact with, or appreciation for, the purpose and sacrifices of the military. This poses a weakness in our system of governance by the people.

This isolation of the military is unhealthy and demonstrates a lack of concern for the affairs that truly matter to the country. We spend hundreds of billions of dollars annually on defense, yet those we consider as the best, brightest, and certainly most powerful are completely out of the picture regarding any aspect of military service, thought, or consideration. This is further evidence of the loss of a sense of duty between most of society and those who serve. Maybe, due to self-interest or other priorities, we have seen this trend emerge over the past 50 years.

In past generations it was common for graduates of the elite universities to serve in the military. In fact, military service was considered a valuable experience, an opportunity to learn leadership at a young age and accelerated pace. Author Kathy Roth-Doquet notes that in 1956, more than 10 years after World War II, “a majority of the graduating classes of Stanford, Harvard, and Princeton joined the military, and most were not drafted.”²¹ That same year more than 400 Princeton graduates went on to perform some sort of military service. Twelve years later 200 ROTC departments reported acts of vandalism linked to anti-war protests. The Army shifted many of its ROTC programs from the Northeast to the Midwest during the last years of the Vietnam War. These cultural changes provided further momentum for the AVF. Within a generation we experienced a growing gap and distrust between the military and significant portions of the leadership class of society.

The Triangle Institute of Security Studies reports that the elites, as a group, have the lowest opinion of the military. In this study “the elites were almost six times more likely than those in the military to say they would be ‘disappointed if a child of mine decided to serve.’”²² This simply demonstrates that those who seem to benefit the most from the rewards of our free society, who enjoy the greatest wealth and opportunity, are the least willing to serve in the institution that provides and maintains those privileges. At some point we as a society should reconsider what it means to be “elite.”

Since the adoption of the AVF there has been a marked increase in the deployment of military forces. A volunteer military coupled with a disinterested Congress and elites of society appears to have paved the way for the adventurism warned by the Gates Commission. In looking at the post World War II timeframe, before the AVF (1946-1973), 19 overseas military deployments occurred. Since adopting the AVF (1973-current), more than 144 deployments have occurred.²³ Granted the world political landscape has changed over the decades and some of these deployments were tied to UN and NATO commitments, and repeated interventions in Haiti, Somalia, and the Balkans. However, the trend is clear.

It is also ironic that we see this spike in military deployments at the same time we hear an ever-increasing call for a “whole of government” approach to solving difficult conflicts and disputes around the world. A more recent example is the almost unnoticed deployment of Army units to Western Africa to fight the Ebola outbreak. We continue to see an

ever-expanding use of military forces to solve non-military problems or employ non-lethal solutions to either police, feed, or shelter the disadvantaged people around the world. And while we continue to liberally commit the military, we are forced to increasingly rely on contractors to support our own troops in austere theaters. From security to food services, to vehicle and aircraft maintenance, we have grown our reliance on contractors to its highest level. A 2013 *Fiscal Times* report noted the ratio was 1.46 contractors for every American Soldier in Afghanistan.²⁴ This is viewed by some as an abdication of many of our core competencies and poses a threat to the military's professional status. Questions like oversight, expertise, cost, and ethical concerns surround this issue.

As we consider the status of our society and its relationship with the military, imagine three iconic images from World War II. The sinking of the *USS Arizona* served to rally a nation against Japan after the surprise attack of Pearl Harbor. The raising of the American flag atop Iwo Jima's Mt. Suribachi immortalized American determination and fighting spirit, and a sailor's spontaneous kiss of a nurse in Times Square, following President Truman's announcement of the defeat of Japan, marked the jubilant end of the war and the anticipation of a brighter future for America and the world. These three images have become timeless artifacts of our culture.

Contrast these scenes with our recent experiences in the War on Terror. The war in Afghanistan traces to the images of commercial airliners destroying New York's World Trade Center. What ensued was America's longest war, one that ended not in victory or defeat, but uncertainty. This war, like the war in Iraq, ended because we were tired of fighting, or we believed our role was complete. As recently as December 2014, the president announced the end of combat operations in Afghanistan. Unlike 1945, this time America hardly noticed that the war was over. There were no celebrations or prospects for a safer or more secure future because we failed to achieve any kind of meaningful victory. In fact, our enemies are arguably stronger today than in 2001.

This is yet another reminder of what has become a troubling trend since World War II. We keep engaging in wars we can't win, or choose not to win, and we seem unable to learn from these failures. Unfortunately we have no images of success to remember because the war wages on and our military commitments will largely grow unnoticed by a disengaged America.

Conclusion

Today we face an increasingly complex and violent world that poses a real threat to our allies and homeland, but we have yet to develop a coherent winning strategy that the country can rally behind. Yes, we may have prevented additional terrorist attacks following 9/11, but we are still at war and will likely remain so for many years to come. As a country, now would be the time to ask ourselves if what has happened to our military policy best supports our security requirements. This entire episode in our recent history has left the military demoralized and distrusting of our senior leaders.

The foundations of military culture were laid long ago with the Declaration of Independence, the Constitution, and with George Washington as the first general in charge of the

Army and the first President of the United States. Contemporary morals and values have changed, while the values of the military are still based largely on the traditions established during the founding of the country. We embrace these values because they enable the military to function as a professional and ethical organization. The widening gap between the military and society is reflected in the high standards the military must hold itself to, as evidenced by the current efforts to overcome the sexual harassment problem. The situation is bad and needs repair but it is only reflective of the same issues in society. Part of the gap in contemporary morals is reflected in the current political and legal landscape of selfishness and ego-centric policies. Finally, the AVF has made the military a tool to be used at the beck and whim of the president. Having a draft would serve to mobilize society behind the military, since the sons and daughters of people across the country would be put in harm's way, versus less than 1% of American youth. We continue to see a dire lack of accountability for how our military is used and the results it achieves. In conclusion, the transitioning of society's values and use of the AVF have widened the gap of trust between the military and the American people and government. The military must view this gap as an opportunity versus a threat, and help bridge the gap by fulfilling its espoused ethical standards and continue to develop young men and women of character.

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Chapter 11

Towards Just Intelligence: Wielding Power More Legitimately in an Era of Persistent Conflict.

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The principles of Just War form the basis for emerging Just Intelligence theory. There is a requirement for Just Intelligence because the lack of an ethical foundation for intelligence has led to injudicious uses of power that have eroded legitimacy. This discussion paper on ethics in intelligence articulates the following:

- How Just War serves as a model for wielding power judiciously.
- The increasing preponderance of intelligence in wielding power.
- The blurring boundary between armed conflict and intelligence.
- How the narrative framework of Just Intelligence can resolve the consequent ambiguity.
- How narrative frameworks serve to uphold legitimacy and protect power.

As a serving soldier, I have often found myself in ethically ambiguous circumstances. Such situations create deep ethical concerns about what is the most appropriate course of action in achieving the tactical mission and contributing to overall operational and strategic success. I imagine my counterparts in the intelligence community find themselves in equally demanding dilemmas daily. However, in contrast to them, c. 2000 years of distilled moral philosophy and precedent in the form of the Just War tradition support my decision-making. I am the grateful beneficiary of countless forebears and the dilemmas they faced in understanding what is and what is not acceptable behavior in conflict. Yet, if spying is indeed the second oldest profession, where is its equivalent ethical code? If we can kill ethically, surely they can spy ethically too?

The compounding impacts of the Snowden leaks and the CIA's use of torture represent a crisis for the legitimacy of the US intelligence community, and by extension for those of its allies. The immediate and visceral partisan reaction to the Senate Intelligence Committee's majority report is as unseemly as it is inevitable given the contemporary political climate in Washington. However, as the initial fuss and froth dies down, the key question over legitimacy remains, particularly because the ramifications of denuded legitimacy extend far wider than the boundaries of our intelligence communities. They go to the very heart of how America and its allies wield power in the 21st Century international system as it undergoes revolutionary change. Establishing and protecting the legitimacy of using military power at all the levels of war before, during, and after conflict is the defining characteristic of the Just War tradition. A nascent Just Intelligence tradition is forming with the same legitimating goal in mind for our Intelligence community.

1. Judiciously wielding The Big M: The model of applying power ethically to minimize harm and protect legitimacy.¹

Just War provides the bedrock for the Law of Armed Conflict. Elements of the tradition run directly from the lofty realms of philosophers atop their ivory towers to the orders given to the infantryman at the tip of the spear. In modern conflict, understanding and applying Just War principles such as military necessity, proportionality, humanity and discrimination are as integrated into the training of service personnel as much as the ability to call for fire and give accurate target indications.

The Just War tradition does not therefore represent a mere philosophical abstraction or obscure jurisprudence. Instead, it is a vital instrument in the application of force. It is imperative in achieving sustainable political outcomes in positions of relative advantage – what we quaintly used to call victory. Just War is indispensable in the contest for legitimacy that underpins all conflict – armed or otherwise.

In seeking to justify how to wage war ethically, the Just War tradition adopts an important and perhaps counter intuitive precept as its starting point. The very thing it seeks to justify, war, is “prima facie gravely wrong.”² This is because of the harm war causes. Nonetheless, it is inescapable that armed conflict exists and that it may present the lesser of multiple evils in certain circumstances.³ The body of thought that comprises Just War concerns itself with defining principles and providing a narrative framework that assists decision makers, practitioners, and the public in assessing such circumstances. Consequently, it serves as a legitimizing function in justifying the use of force.

2. DIME? The increasingly big I in the construct of national power.

Information in all its forms is the basis of intelligence.⁴ There was a time when the nature of information allowed intelligence agencies to stand outside the explicit exercise of power. The intelligence profession was concerned with better collecting and analyzing information to enable the governments of the US and its closest allies to achieve decision superiority in exercising the various instruments of their national power. However, as Bob Dylan famously said, “the times they are a changin’.”⁵ The exponential growth of information and its ability to literally move at the speed of light has not only created a new domain; cyberspace, it has fundamentally affected each of the existing domains. Arguably, it is doing so in ways that are “unforeseeable, unpredictable and uncontrollable” and thereby revolutionary.⁶

The traditional boundary between the realms of armed conflict and intelligence is therefore increasingly blurred. The consequence of this trend is increased ambiguity regarding the ethics of intelligence and the use of force in overlapping domestic and international jurisdictions that no longer fit traditional paradigms. Increased ambiguity presents greater risks to the underlying legitimacy of both military and intelligence activities. Should the NSA be using GCHQ to get around constitutionally protected civil liberties as Edward Snowden has alleged? Should rendition through third countries be acceptable to facilitate the use of torture? Should assassination of American citizens abroad be countenanced by an AUMF signed on 14 September 2001 that will seemingly operate in perpetuity?

As much as there may be an aspiration for a firewall to exist between intelligence and armed conflict, with the former as a minimally harmful activity that supports decision makers impartially, the experience of the last decade and more suggests it is unrealistic. The combined intelligence and military contributions to the prosecution of the Global War on Terror (GWOT) and its equally awkwardly named successor campaigns provide harbingers of modern conflict where blurred boundaries create deep ambiguity over the legitimacy of the measures used. Is this ambiguity inevitable?

3. Unavoidable Ambiguity: The blurring boundary between armed conflict and intelligence.

In his seminal 2005 book *The Utility of Force*, General Rupert Smith boldly declares, “War no longer exists.” Somewhat regrettably, this does not herald the arrival of world peace but rather signals the wicked problem of persistent conflict and confrontation that he terms “War amongst the people.” Furthermore, this state of affairs exists not as violent punctuations of a peaceful equilibrium, as industrial era wars did, but instead is constantly present “in many permutations.”⁷ For the purposes of this paper, the important inference from General Smith’s deductions on the changing nature of war in the modern world is how the traditional demarcation between the realms of armed conflict and intelligence no longer holds true. Therefore, the traditional paradigms require updating to match changing realities in assessing ethics and protecting the legitimacy of how we wield power.

The Just War tradition, given both its longevity and evolutionary nature, serves as one foundation or model for meeting this requirement. Conversely, the traditional dichotomy that frames espionage ethics, the media trope that pits civil liberties against national security, is far too narrow. This is primarily due to its domestic focus but also the fact that it is a zero sum analysis based upon a logical fallacy that a dearth of civil liberties will guarantee security or vice versa.⁸

The blurring of boundaries between armed conflict and intelligence activity also results from the increased impact on national security that non-state actors and individuals now have and the measures governments have taken in response. For Harlan Ullman, a senior advisor at the Atlantic Council, this increased impact can be accounted for by the effects of globalization and the means afforded to individuals and non-state actors to act as nefarious agents in the international system.⁹

According to Richard Aldrich, a Professor of International Security at the University of Warwick, there have been three specific consequences of globalization on intelligence activities.¹⁰ The ability of multiple illicit opponents to exploit seams such as cross border flows of money and people has shifted the balance in their favor vice the power of nation states. This has resulted in an increased imperative for intelligence agencies to operationalize in order to disrupt and fix threats using increasingly coercive means. Simultaneously however, these dynamics have played out against increased expectations from empowered civil societies that intelligence activity meet explicit ethical standards. Consequently, “the most perplexing challenge for intelligence in the era of globalization is presented by the contradictory demands of more active operations set against expectations of ethical behavior and good governance.”¹¹ This dilemma put forward by Aldrich, whose 2009 paper

provides prescient warning of the dangers of “regulation by revelation,” itself illustrates the need for an explicit ethical framework for our intelligence communities.¹² How can we better frame this ambiguity in order to create norms and workable narrative constructs?

4. Framing Ambiguity: Updating our narrative constructs.

The topography of the evolving paradigm of threat and conflict in the international system is opaque. Likewise, the implication for how we wield national power in response is unclear. One proposition that has generated much debate is the prospect of “21st Century Combat as Politics” put forward by Emile Simpson in his 2012 book *War from the Ground Up*. His description of fragmented audiences not bounded along traditional nation-state lines behooves a much more fluid and dynamic approach to protecting national interests and security. Simpson does much to put flesh on the bones of Smith’s many permutations of the war amongst the people paradigm. For Simpson, “War is expanded to incorporate all means which deliver political effect: violence is mixed into other political activity, so that there is a severe erosion of the interpretive difference between military and political activity; war and peace.”¹³

The implication of Simpson’s deductions on conflict for ethics in intelligence is that the contest for legitimacy fought across all the levers of national power; be they Diplomatic, Informational, Military, or Economic, curtails the traditional freedom of maneuver for intelligence activities. Consequently, there is a need for unambiguous interpretive constructs that enable the sustained legitimacy of a given narrative. Just Intelligence can provide one such construct.

Increasing reference to Just Intelligence theory, based upon the Just War tradition, enables us as practitioners, decision-makers and citizens to understand better the dynamics at play and consequently wield power more legitimately. This is because the assessment and interpretation of intelligence and/or military action or inaction will be a vital battleground itself in protecting national security. Essentially, referring again to the reflections of Smith and Simpson, the continuum of contemporary conflict and confrontation to protect national interests against multifaceted threats is an ongoing contest to “maintain the narrative — perpetually to win the argument.”¹⁴ The implication for ethics in intelligence is that sustaining legitimacy becomes an end in itself in the contest for narrative dominance and protecting against narrative fragmentation. Ultimately, “a strategic narrative which neglects ethos completely is in danger of finding itself illegitimate in the longer term.”¹⁵ What specifically therefore can Just War offer Just Intelligence in meeting this legitimizing function?

5. From Just War to Just Intelligence: Evolving Principles.

Just as armed conflict has been present throughout history, intelligence, the need to keep secrets secret and discover the secrets of an adversary, is likewise a constant. Nonetheless, in spite of blurring boundaries, intelligence and armed conflict are evidently not the same. They are however analogous. Both protect national security and include activities with the potential to cause harm; harm that we would otherwise consider unethical. We may therefore also consider intelligence activities, like armed conflict, as *prima facie* wrong and therefore requiring ethical justification. At some level, they will potentially

cause a form of harm, whether that be to the target, the intelligence officer/agency, or the wider societies involved.¹⁶

However, unlike the *prima facie* case of harm in Just War, the underlying precept of harm always resulting from intelligence is not universally accepted. The ethical spectrum for assessing and rationalizing intelligence runs from Immanuel Kant the absolutist, to Niccolo Machiavelli the realist. For Kant, all forms of espionage were “intrinsically despicable” and therefore prohibited.¹⁷ Whereas for Machiavelli ethical considerations were dispensable constraints, a distant second to the need to maintain power at all costs relative to real or perceived adversaries.¹⁸

Nevertheless, perhaps the most memorable and convincing argument put forward on the place of ethics in intelligence came from the late British strategist Sir Michael Quinlan who observed that, as all intelligence is ultimately a human activity, “we can no more step outside ethics than we can opt out of the force of gravity.”¹⁹ Quinlan also notes that in 1985, the then CIA director, Admiral Stansfield Turner, wrote that the true test of ethics in intelligence is whether those authorizing the actions could justify them if they became public.²⁰ This observation seems particularly apposite now in light of the CIA’s use of torture. To sustain legitimacy in the modern world, intelligence must therefore be demonstrably ethical.

As yet, there are no agreed principles for a so-called Just Intelligence. Nevertheless, a number of academics and practitioners from the trans-Atlantic intelligence community have identified the requirement and proposed principles to form the basis of Just Intelligence doctrine.

In order to help resolve ambiguity and counter threats to legitimacy, recourse to Just Intelligence in framing ethical dilemmas will ultimately provide for better assessments by all concerned. Just War provides a ready and practical interpretive framework that serves to clarify ambiguity and sustain legitimacy in armed conflict.²¹ It is therefore reasonable to expect that a concomitant Just Intelligence will serve the same ends, especially as boundaries between the two realms blur. Such an observation should not, however, be equated with advocating for a complete erosion of the legal and moral boundaries between armed conflict and intelligence.

As with the relationship between Just War and the Law of Armed Conflict, Just Intelligence principles should be enshrined in law to form a concrete chain that links moral philosophy to policy. Indeed, necessity and proportionality are finding their way, seemingly by osmosis, into some of the relevant primary legislation in the UK. Strengthening such bonds does not guarantee future transgressions will not happen. Instead, it creates a narrative framework that practitioners, along with their legislative and judicial overseers, can use to engage in a much more constructive and legitimizing deliberation than the standard debate over civil liberties vice national security.

I strongly believe that the public can also use the concept of Just Intelligence to understand what is and what is not acceptable intelligence conduct. To take two examples, collateral damage has entered public discourse in rationalizing civilian casualties against military necessity. Is it unreasonable to expect that we may similarly use ‘collateral intrusion’

resulting from unintentional collection of privileged material, rather than frantically reaching for the nearest copy of Orwell's *1984*? Secondly, as Just War helps us understand the difference between murder and lawful killing in war, can we not expect Just Intelligence to help frame the difference between the forbidden (torture) and the essential (interrogation)?

Just War (EXTANT)		Just Intelligence (PROPOSED) ²²
<i>jus ad bellum</i>	Just Cause	<i>Omand: There must be sufficient sustainable cause.</i> <i>Bellaby: There must be a sufficient threat to justify the harm that might be caused by the intelligence collection activity.</i>
	Proportionate Cause	
	Right Intention	<i>Omand: There must be integrity of motive.</i> <i>Bellaby: The means should be used for the intended purpose and not other (political, economic, social) objectives.</i>
	Right Authority	<i>Omand: There must be right authority.</i> <i>Bellaby: There must be legitimate authority, representing the political community's interests, sanctioning the activity.</i>
	Reasonable Prospect of Success	<i>Omand: There must be reasonable prospect of success.</i>
	Last Resort	<i>Quinlan</i> <i>Omand: Recourse to secret intelligence must be a last resort.</i> <i>Bellaby: Less harmful acts should be attempted before more harmful ones are chosen.</i>
<i>jus in bello</i>	Discrimination	<i>Bellaby: There should be discrimination between legitimate and illegitimate targets.</i>
	Proportionality	<i>Quinlan</i> <i>Omand: The methods used must be proportionate.</i> <i>Bellaby: The harm that is perceived to be caused should be outweighed by the perceived gains.</i>
<i>LOAC</i>	Military Necessity	
	Humanity	
<i>jus post bellum</i>	Legitimate peace for all sides by protecting rights, prosecuting wrongs and rehabilitation (Orend²³)	

Table 3. Comparison of Just War and Just Intelligence principles. Created by author.

The advent of *jus post bellum* in recent years is an example of the inherently evolutionary nature of the Just War tradition. This presages that the military instrument of national power is better placed to anticipate and absorb the ethical implications of

ongoing upheavals in the international system. The absence of such an equivalent tradition in intelligence at the very least foretells a less desirable outcome. As Quinlan simply puts it, the complexities of modern day circumstances result in a “greater need than ever before of a workable and relevant moral compass.”²⁴ Seeking to rely on a solely consequentialist or realist foundation of ethical assessments of intelligence will not satisfy the increasingly complex requirements demanded in a globalized world. More bluntly, it will likely lead to more 2003 and less 1776 in the unfolding evolution of American Power.

6. Framing American power: The City on the Hill as a legitimizing vision.

Why is legitimacy important? The exceptional power of America in particular is as multifaceted as it is unprecedented. Therefore, understanding what it consists of and from whence it came requires conscious framing. Perhaps the most powerful and enduring allegory of American power is that of the John Winthrop’s allegory of the City on the Hill. As such, it is worth quoting at length:

for we must Consider that we shall be as a City upon a Hill, the eyes of all people are upon us; so that if we shall deal falsely with our God in this work we have undertaken and so cause him to withdraw his present help from us, we shall be made a story and a byword through the world, we shall open the mouths of enemies to speak evil of the way of God and all professors for God’s sake; we shall shame the faces of many of God’s worthy servants, and cause their prayers to be turned into Curses upon us till we be consumed out of the good land whether we are going.²⁵

Winthrop’s impassioned plea to his fellow settlers aboard the *Arabella* in 1630 set out a vision for the new world based explicitly on the *moral* and *exemplary* exercise of power. Subconsciously, he established what was to become the great declaratory tradition of idealism that weaves together the threads of American history. Subsequent examples include, *inter alia*, the Declaration of Independence, the Constitution and its associated Bill of Rights, the Gettysburg Address, and the Civil Rights Act. Together they are the foundation of American power and a source of its continuing legitimacy as the self-proclaimed leader of the free world. Crucially, for this framing of American power, Winthrop’s sermon also forewarns what shall happen when such idealism is forsworn. In short, a failure to live up to its ideals will render America illegitimate in the eyes of its citizens, its allies, and its adversaries alike. Protecting that legitimacy is therefore of the utmost importance.

There are of course extant legal frameworks and policy documents that direct and regulate our intelligence communities. They are however relatively recent and the crisis of legitimacy now faced by the intelligence community suggests they are insufficient. The Just War tradition is a model of how we can calibrate this framework and ground it in ethics to serve the respective interests of our nations better. Taken together, the practitioners and academics referred to in this paper are attempting to articulate practical principles for the intelligence community in weighing up the moral hazards of any given course of action. Their underlying and worthy intent is seeking to protect the legitimacy of the intelligence community.

Absent a robust and evolving Just Intelligence tradition, the threat exists that our intelligence communities underlying legitimacy will continue to fray in the face of diminishing public confidence. The extant ethical and legal frameworks on both sides of the Atlantic have not sufficed to protect against this disconcerting dynamic.

The increasing velocity of destabilizing events in the international system is only likely to increase as the effects of globalization continue to unfold. Consequently, our armed forces and intelligence agencies are likely to get busier and face circumstances that are even more ambiguous. Expecting our intelligence communities to rely on a scant ethical and legal framework devised during the cold war, and thereafter developed piecemeal in response to counter terrorism imperatives, is insufficient. Pursuing a tradition of Just Intelligence offers a pragmatic and proven alternative approach to protect the legitimacy of the intelligence profession and with it an opportunity to stay true to the idealism that is the hallmark of American exceptionalism.

Notes

1. As defined in Joint Publication (JP) 1-0, *Doctrine for the Armed Forces of the United States*. (Washington, DC: Government Printing Office, 2013), I-11 para 9, there are 4 elements of national power; Diplomatic, Informational, Military & Economic. They are commonly referred to using the mnemonic DIME.
2. Charles Guthrie and Michael Quinlan, *Just War: The Just War Tradition: Ethics in Modern Warfare*, 1st ed. (London: Bloomsbury Publishing PLC, 2007), 11.
3. David Whetham, ed., *Ethics, Law and Strategy: Normative Frameworks and the Practice of Military Operations* (United Kingdom: Palgrave Macmillan, 2010), 68.
4. See Joint Publication (JP) 2-0, *Joint Intelligence*. (Washington, DC: Government Printing Office, 2013), GL-8 for the definition of intelligence used in this paper.
5. Bob Dylan, *The Times They Are A Changin'*, 1964. https://www.youtube.com/watch?v=e7qQ6_RV4VQ (accessed 7 December 2015).
6. They are the characteristics of “military revolutions” that result in fundamental changes in the nature of war and its social construction. Macgregor Knox and Williamson Murray, eds., *The Dynamics of Military Revolution, 1300-2050* (Cambridge, UK: Cambridge University Press, 2001), 7.
7. Rupert Smith, *The Utility of Force: The Art of Warfare in the Modern World* (New York: ALLEN LANE (PENG), 2005), 403-404.
8. David Omand, *Securing the State*, 1st ed. (London: C Hurst & Co Publishers, 2010), 267.
9. Talk given at the British Embassy, Washington, DC, 17 October 2014.
10. Richard J. Aldrich, “Beyond the Vigilant State: Globalisation and Intelligence,” *Review of International Studies* 35, no. 04 (2009), 890.
11. Aldrich, “Beyond the Vigilant State,” 899-900.
12. Aldrich, “Beyond the Vigilant State,” 902.
13. Emile Simpson, *War from the Ground up: Twenty-First Century Combat as Politics* (New York: Oxford University Press, 2012), 231.
14. Simpson, *War from the Ground Up*, 210.
15. Simpson, *War from the Ground Up*, 213.
16. Ross W. Bellaby, *The Ethics of Intelligence: A New Framework* (United Kingdom: Routledge, 2014), 3.
17. Quoted in Michael Herman, “Ethics and Intelligence after September 2001,” *Intelligence and National Security* 19, no. 2 (2004): 342–358, 382.
18. Niccolò Machiavelli, *Machiavelli: The Prince*, Quentin Skinner and Russell Price (eds.), *Cambridge Texts in the History of Political Thought* (Cambridge: Cambridge University Press, 1988).
19. Michael Quinlan, “Just Intelligence: Prolegomena to an Ethical Theory,” *Intelligence and National Security* 22, no. 1 (2007): 1–13, 2.
20. Quinlan, “Just Intelligence,” 2.
21. General Sir Peter Wall, *The Ethical and Legal Challenges of Operational Command* in David Whetham, ed., *Ethics, Law and Strategy: Normative Frameworks and the Practice of Military Operations* (United Kingdom: Palgrave Macmillan, 2010), 221.
22. See the following authors: Michael Quinlan, Just Intelligence: Prolegomena to an Ethical Theory,” *Intelligence and National Security* 22, no. 1 (2007): 1–13, 7-8; David Omand, *Securing the State*, 1st ed. (London: C Hurst & Co Publishers, 2010), 286-287; Ross W. Bellaby, *The Ethics of Intelligence: A New Framework* (United Kingdom: Routledge, 2014), 25.

23. Brian Orend, *The Morality of War*, 2nd ed. (Canada: Broadview Press, 2013) Chapters 6 & 7.

24. Charles Guthrie and Michael Quinlan, *Just War: The Just War Tradition: Ethics in Modern Warfare*, 1st ed. (London: Bloomsbury Publishing PLC, 2007), 3.

25. Quotation taken from: “‘The City upon a Hill’ by John Winthrop: What Is It About?,” *The Historic Present* (The Historic Present, 28 June 2010), last modified 28 June 2010, <https://thehistoricpresent.wordpress.com/2010/06/28/the-city-upon-a-hill-and-puritan-hubris/> (accessed 6 August 2015).

Chapter 12

Kevlar for the Soul: The Morality of Force Protection

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In the opening days of the 2003 invasion of Iraq, then Lieutenant Nathaniel Fick led twenty-two Recon Marines as part of an attack on an Iraqi military airfield at Qalat Sukkar.¹ The original plan called for The British Parachute Regiment to assault the airfield following a US Marine reconnaissance to assess the suspected presence of a serious Iraqi defensive threat, including tanks and anti-aircraft guns. However, after an all-night drive in total darkness, without headlights and aided only by the grainy green fields of night-vision goggles, through enemy territory and far forward of any supporting American position, Fick arrived at the rendezvous point just before dawn to find that plans had changed. With American reconnaissance behind schedule, the British assault could not receive authorization to proceed. A reasonable precaution, Fick assumed the attack would simply be delayed until the scouting could be completed. This was not to be. Instead, it was ordered that the Recon Marines, in only light-skinned high mobility multipurpose wheeled vehicles (HMMWVs) and with no preparation or assessment time, would attack the airfield immediately. Despite being several days into the war and having already experienced close combat, Fick recalled feeling, for the first time, genuine fear, not over possibility of battle, but rather at the prospect that his commanders might be making choices under the same stress and fatigue that had left him and his Marines exhausted.

The plan was unsophisticated. The Marine HMMWVs would rush down the primary access road to the airfield, smash through the front gate, spread out and engage enemy forces in and around the airport structures, and finally consolidate again on the main runway beyond. Just as the assault began, however, company command radioed yet another change; any personnel on the airfield were now declared hostile. Such an order annulled the normal rules of engagement constraining the Marines to fire only if fired upon, or after having identified unambiguous military targets. Instead, the “declared hostile” order effectively rendered the airfield a free-fire zone – there no longer *were* any rules of engagement. Instinctively, Fick grabbed his radio handset to countermand the decree and order his platoon to adhere to their standard rules of engagement. But he stopped. In the heat of an attack already underway he overruled the urge, trusting that his company leaders had new information that justified the change and that there simply was no time to share it. Cue the terrible consequence:

A machine gun [in the Marine vehicle] in front of us fired a short burst. I caught a blurred glimpse of people, cars, and camels running through the brush. A garbled radio transmission warned of “muzzle flashes, men with rifles.” Something near the people flashed, but we were already beyond them, sprinting for the runway.²

The Marines quickly overran the airfield only to discover that it was deserted and clearly had been for some time. The attack over, they positioned themselves in a defensive

perimeter and began digging in. After some time, there was movement in the distance. Five figures approached. Two women were dragging a bundle wrapped in blankets, while behind them three men pulled another. Intercepting them, the Marine's discovered the enshrouded objects were two wounded Iraqi children; one already near death, his life leaking away through the four holes punched through his abdomen. As the combat medic began triage, it became clear the children had been hit with 5.56 mm rounds. Fick explains:

The only such rounds in Iraq were American, and the only Americans there were us. In horror I thought back to our assault on the airfield a few hours before. The pieces fell into place. Those weren't rifles we had seen but shepherd's canes, not muzzle flashes but the sun reflecting on a windshield. The running camels belonged to these boys. We'd shot two children.³

The platoon responded. With the corpsman insisting one boy would die without immediate surgery while the other might linger before infection claimed him, the Marines staged a small-scale mutiny against initially indifferent senior officers before finally securing an evacuation to a US field hospital where the children would be treated by a shock-trauma platoon. Afterward, Fick brought his Marines together and commenced with a simple acknowledgment: "Fellows," he admitted, "today was fucked-up, completely insane." Fick knew they had gotten lucky. A single well-camouflaged tank could have taken out their entire platoon. That the airfield looked as if it had not been used in years brought no comfort. They had been sent on the attack blind, despite the viability of delaying until proper reconnaissance was completed. Compounding their anger, because of the faulty intelligence assuming heavy resistance, they were granted the "compensation" of the free fire allowance to mitigate the additional risk. Fick confessed his own failure in letting the "declared hostile" order stand and acknowledged that this mistake colluded with several other errors to result in the shooting of innocents. When everything that could be said was said, the Marines then did the only immediate thing left for them to do. They grieved.⁴

But something more transpired in the course of that sorrowful day. Above all else, Fick committed himself to reconfigure his own goals. His men had been issued incompetent orders and were then left to suffer the consequences of other people's poor judgment. Much had conspired against them: foolish tactics; rash deployments of force too often needlessly putting warfighters at increased risk and thereby encouraging the substitution of more aggressive, and often immoral, rules of engagement; apparent indifference to the fate of non-combatants; and the subterfuge of enemy fighters who regularly traded military uniforms for civilian attire to make hash of coalition target selection, and thereby amplify risk to the innocent. Nevertheless, "technical details aside," Fick insisted, "we were US Marines and Marines are professional warriors fighting for the greatest democracy in the world. We don't shoot kids."⁵ It was no longer enough now to simply win the fight and bring his men home. Fick realized he owed it to them to help them fight their bit of the war while maintaining their honor and humanity in order "to get them home physically *and* psychologically intact."⁶

This paper explores what appears to be a pair of dilemmas uncovered by Fick. On the one hand is the commitment to protect the innocent in war. Naturally, both the classic just

war tradition and, more broadly, the international war convention – in Walzer’s phrasing, those “norms, customs, professional codes, legal precepts, religious and philosophical principles, and reciprocal arrangements that shape our judgments of military conduct”⁷ – mandate target discrimination, but, more than this, each also requires that warfighters accept certain personal risks rather than harm civilian noncombatants. On the other hand there is the obligation, incumbent upon the state itself all the way down to the individual fireteam leader, to protect one’s own military personnel. In any war these commitments will often clash. In the asymmetrical conditions of counterinsurgency, enemy tactics intentionally cultivate and exacerbate this clash from a simple tension to something more like a contradiction. This illuminates the second dilemma. Seen especially through the lens of the by now familiar psychiatric condition known as moral injury, the increased risk of inadvertently maiming or killing the innocent, especially children, bifurcates the idea of force protection into two distinct, if inseparable, domains; that which cares for the warfighter’s physical wellbeing and that which protects their psychological health or, to render it in the old tongue, their soul.

The realization that war can be morally eviscerating is as old as war itself. Although the idea that combat occasions moral and ethical challenges that, even in optimal operational environments, can lead to perpetrating, failing to prevent, or bearing witness to acts that transgress deeply held beliefs is no new wisdom. Empirical and theoretical research surrounding the sequela known as moral injury as a proposed, if controversial, sub-set of PTSD is only in its infancy and key concerns remain inadequately addressed, among them the relationship between moral injury and the normative dimension of the act of killing.

Deepening the crisis, clinical studies suggest that having killed in combat is *the* chief predictor of PTSD, over even threats to life or the intensity, duration, or repetition of combat.⁸ Neither the circumstances surrounding the killing nor the emotional state of the killer turn out to be absolutely essential factors. Whether occurring in the commission of an atrocity, prior to the accidental killing of a non-combatant, or preceding the felling of an enemy within the laws of war, the act of making an independent decision to kill another human being, insists David Grossman, and “watching as he dies due to your action combine to form one of the most basic, important, primal, and potentially traumatic occurrences of war.”⁹ Subsequent to such a trauma, and manifesting more specifically in the experience of remorse, sorrow, or guilt rather than fear or hypervigilance, moral injury has come to be recognized as a, or even *the*, chief predictor of suicide among combat veterans.

Thus, drawn along this trajectory, there seems to be a direct line between killing in combat and warfighters dying by their own hands at troubling rates, casualties of war even long after their firefights have ended. While suicide is the most extreme consequence, many individuals who struggle with having taken another life identify that because killing, even in war, transgresses moral or religious beliefs, they suffer a profound sense of dissonance and internal conflict that manifests in higher symptoms on most mental health and functional impairment, measures including not only PTSD symptoms but those associated with peritraumatic dissociation and functional impairment, in addition to manifesting increased rates of violent behavior, alcohol abuse, uncontrollable anger, marital and other relationship problems, frequent job turnover, and excessive risk-taking.¹⁰

However imposing such challenges, conceptual resources are nevertheless extant to help warfighters deal with the trauma of killing in combat. Chief among them, in my estimation, is the classic just war tradition whose nascent roots are found in Ambrose and Augustine, find greater maturation in Thomas Aquinas and the neo-scholastics, and stretch forward to Paul Ramsey, Jim Johnson, Jean Bethke Elshtain, and Nigel Biggar. Within this tradition are rendered, among other things; guidelines and limits, exhortation toward particular character dispositions, crucial distinctions between moral and non-moral evil, and the location of moral judgment in intention rather than simply outcome alone. Such ideas oppose the notion that killing is simply *malum in se* – wrong in itself, recognizing rather that killing comes in different kinds, including that which is simply innocent as well as that which, however tragic, is morally commendable. While such resources provide invaluable help with the lawful killing of lawful enemies, they can go some distance in helping warfighters navigate more complex traumas like the accidental killing of non-combatants. However, they cannot go all the way and conceptual frameworks alone will always be impotent in preventing moral injury, or the conditions for moral injury, in certain especially morally eviscerating circumstances.

To cite one example of such limited efficacy, the Israeli philosopher Noam Zohar rightly notes that permission for the unintended killing of non-combatants is commonly provided through referral to the doctrine of double effect. But Zohar also notes that gestures toward double effect as advocated in some resources, such as the articulation of the law of warfare found in the 1907 Hague Conventions, can result in particularly perverse permissions, allowing for example, that the attacker may, despite the presence of innocents in a combat zone, do anything that would be permissible to do if there were no innocents there, subject to the restrictions of proportionality. The problem, as Zohar notes, is that under such guidelines there is no compulsion for a combat planner to choose equally mission effective alternatives that would result in fewer or even no non-combatant casualties over a strategy that would result in significant innocent deaths so long as the threshold of proportionality had been met.¹¹ This is morally obtuse and there are better renderings of double effect that stipulate additional limits of necessity in the sense that the bad effect is unavoidable and the good effect genuinely *cannot* be attained otherwise.¹²

But even if these additional principles were inaugurated there would still be the question of whether the more moral alternatives, even if equally effective, are also at least roughly equal in permissible costs regarding any or all of a spectrum of values either financial, strategic, or time resources, or, most relevant here, in higher risk to our own warfighters. Deliberating which costs are worth paying to better secure the lives of the innocent will always prove deeply complex and must be undertaken, and the conclusions embraced, by the responsible agents at all levels in the organizational culture of the military from the lowest ranked individual fighter likely shouldering a substantial portion of the possible costs, to the highest officers and their civilian overseers.

But if conceptual resources cannot independently go the distance of preventing moral injury in certain cases, neither can the practical ones. Prior to the start of the war, Lieutenant Fick stood in the Kuwaiti sands of Camp Matilda listening to an address by Lieutenant General James Conway, the commanding general of the first Marine Expeditionary

Force. Conway's theme was the rules of engagement and he emphasized four points. First, commanders had a legal and ethical responsibility to defend their Marines; second, when the enemy used human shields or intentionally brought the battle to population centers he, not US warfighters, was responsible for endangering them; third, commanders would be held responsible for the facts as they appeared to him in good faith under the given circumstances, not as they were revealed after an investigation; and fourth, the general took the opportunity to distill the rules of engagement to their essence, essentially proportionality and discrimination.¹³ In those early days, Fick found this guidance, in his words, pure gold, perceiving the ROE to be to the minds of his Marines what armor was to their bodies. This follows Vietnam combat veteran Karl Marlantes' colorful assertion that such preparatory instruction helps to provision warfighters with a spiritual combat prophylactic or, in my own perhaps more sermon ready locution, armor for the soul.¹⁴

After Qalat Sukkar, however, the limitations were made plain. Fick realized that the shooting of the two Iraqi children occurred well within the given rules of engagement, there would be no command investigation, no questions asked. He also recognized that his Marines would carry the burdens of that day for the rest of their lives.¹⁵

This brings us to consideration of what Martin Cook has described as "the implicit moral contract between the nation and its soldiers."¹⁶ Cook means here something more than the merely legal contract in which pay and benefits are spelled out, he means that kind of constructed social contract in which is spelled out the relationship and attendant responsibilities between the contracting parties. The terms of these responsibilities make plain that military personnel live in a unique moral world:

They exist to serve the state. The essence and moral core of their service is to defend that state through the management and application of violence in defense of the territorial integrity, political sovereignty, and vital national interests of that state. Their contract has an "unlimited liability" clause – they accept. . . the obligation to put their lives at grave risk when ordered to do so.¹⁷

Of course, the contract also requires that they kill enemy human beings when lawfully ordered to do so. In return, the state owes warfighters the confidence of knowing that they will only be called upon for morally legitimate and weighty causes and with the implicit promise that the circumstances under which they are being called to kill and risk death are such that the defense of the sovereignty and integrity of the nation, or the careful extension of its national interests, truly requires their action.¹⁸

To bring the accidental killing of non-combatants back into view, in light of the state's moral responsibilities and despite the fact that the preservation of innocent foreign nationals will always be a priority for at least politically expedient if not moral reasons, I note Cook's correct assertion that "even the concern with protection of innocents will probably be secondary to force protection of our own troops."¹⁹ Some of this is also due to political expediency and American political leaders concluding that the deployment of American military force will be politically acceptable only if American casualties are kept to a minimum. In this they arguably register the pulse of the American public for whom the standard of acceptable conflict is essentially "immaculate war."²⁰ However much this vies against

traditional just war concerns regarding the lives of non-combatants, the prescience of the observation is almost certainly true and Cook presents the NATO bombing campaign over Kosovo as exhibit one.

In the Kosovo operation, despite repeated emphases on precision targeting aimed at minimizing civilian casualties and damage to civilian structures and property, Cook notes that the precision would surely have been much higher had the coalition aircraft operated at altitudes lower (and more risky) than 15,000 feet. Moreover, the decision to adopt a no-boots-in-the-mud airpower-only campaign (and announce it in advance) surely lengthened the conflict and did nothing to bring a cessation of the on-the-ground atrocities that prompted the conflict in the first place. Cook observes:

Since those small and dispersed units on the ground were not very susceptible to effective targeting, given the chosen weapons platforms and tactics NATO implicitly embarked upon a war of attrition against Serbian infrastructure. No matter how precise the weapons employed, widespread destruction of national infrastructure is inherently an indiscriminate attack on the whole population.²¹

In summary, with Kosovo the idealistic humanitarian intentions were hamstrung by a commitment to force protection to the degree that restricted effective tactics able to end atrocities and promoted tactics that likely heightened the misery of the very people we were trying to help.²² While such tactics might make some sense in light of the state's responsibilities to care for its own warfighters, one has to ask, in light of moral injury, what does force protection finally mean?

As darkness fell over the airfield at Qalat Sukkar, Lieutenant Fick sat alone in the dim green light of the radios. He felt sick for the wounded shepherd boys, for his Marines who abetted in their wounding, and for himself, not in self-pity but for the "kid who'd come to Iraq. He was gone."²³ But as I have already noted, his remorse was marbled with resolve. Even if it meant increased risk, his Marines would fight their little piece of the war with honor and in retention of their humanity.²⁴ In just this way, this paper, like Fick, gestures toward a simple but perhaps paradoxical commitment, force protection must now be more deeply reconfigured to include both physical and psychological preservation and to allow that the psychological preservation will likely require tactics that increase physical threat.

This does not mean that I am not looking for a fair fight nor am I suggesting that we take every risk in limiting harm to non-combatants. There is nothing in the just war tradition that prohibits so overwhelming an enemy challenge that, for all intents and purposes, the enemy has no real chance of defeating you. If our jet fighters can destroy enemy aircraft before their radar systems can even detect our presence, all to the good. If a belligerent nation so conducts themselves so as to provoke a response of force sanctioned, obligated by the just war tradition, then respond with respond with force we must—even if our enemy's warfighting ability, compared to our own, results in the equivalent of their bringing a knife to a gunfight. But because veterans often lament that while prior to deployment their lethal abilities were refined, their ethical understanding of killing was not. They regularly enter combat with a commonly held assumption: killing is wrong, but in war it is necessary. If this is the case, then compliance with the ROE is never going to be enough to prevent moral

injury because the very business of combat is perceived to be morally injurious. Against this belief, those charged with the moral formation of our warfighters must employ conceptual frameworks such as the classic just war tradition that can disabuse warfighters of false moral notions and replace them with those more ethically sound. But because these conceptual truths must navigate reality, they must be accompanied by rules of engagement compel warfighters to maintain fidelity to proportionality and discrimination.

In closing, I want to underline the preceding with an anecdote regarding General George Marshall's commencement address following receipt of an honorary doctorate at Trinity College, on 15 June 1941. In his comments he drew a parallel between the role of Trinity College and that of the United States Army, both of which provide in their own manner patriotic service to the nation. Trinity accomplished this, in part, by attending not simply to the technical academic preparation of its students but to the spiritual needs required of them to be participatory citizens in distressing and unpredictable times. Of the Trinity student, Marshall noted, "Their period of development here not only vitalized the faculties of their minds but also aroused and intensified those latent forces of the soul that the ordinary educational process sometimes fails to reach." In his own martial universe, the General noted, the word "soul" would be replaced with "morale."

Like the vocation of the university, Marshall continued, the War Department of the United States had an obvious and perhaps not-so-obvious dual concern. Instead of a university's production of scholars, the War Department might easily be thought to be concerned only with the "development and perfection of a war machine." One thinks mainly of "the production of bombers, of pursuit ships, of tanks, howitzers, rifles and shells." But, the General insisted, underlying "the essentially material and industrial effort is the realization that the primary instrument of warfare is the fighting man." He continued:

So we progress from the machine to the man and much of our time and thought and effort is concentrated on the disposition and the temper and the spirit of the men we have mobilized and we get back to the word "morale."...Today war, total war... is a long drawn out and intricately planed business and the longer it continues the heavier are the demands on the character of the men engaged in it...The Soldier's heart, the soldier's spirit, the soldier's soul, are everything. Unless the soldier's soul sustains him he cannot be relied on and will fail himself and his commander and his country in the end.²⁵

The effort to prevent this failure is not a martial task alone. Those public institutions charged with the moral formation of those young people from whom future warfighters are drawn; schools, faith communities, families, and the like, must take up their role as well. First, by becoming willing to accept increased risks to our deployed sons and daughters and by shuffling off their insistence for immaculate war, but also by so forming these boys and girls that they grow to be the kind of man or woman willing to pay such increased costs. Such formative measures must take place *before* deployment, for just as the time to develop a sexual ethic is not the backseat of a car, so too is boot camp not the time to consider the ethics of killing. They must also be continued *during* deployment, in the ongoing maintenance of bodies and souls in the chaos and din of battle. But they must continue

after deployment as well. Steve Irwin, the late Australian wildlife expert and television personality, once noted that before jumping on the back of a crocodile you had better have a plan for jumping off, inadvertently addressed the importance of knowing how to bring our warfighters home and having already prepared a place to which combat veterans can return and find holistic care that goes beyond simply psychiatric treatment and therapy. In helping to identify the tension between protecting non-combatants and force protection, and in expanding our understanding of the latter, this paper hopes to help inaugurate reflection on how to help warfighters to endure the morally bruising environment of combat without themselves becoming irreparably morally bruised.

Notes

1. Captain Fick, then lieutenant, led a platoon of First Reconnaissance Battalion Marines – a Marine Corp special operations unit and a leading element of the American invasion of Iraq in 2003. The events described here are drawn from his memoir *One Bullet Away: The Making of a Marine Officer* (Boston: Houghton Mifflin Co., 2006), 234-242. The platoon's experiences, including the assault on the airfield, are also recorded in the book *Generation Kill* by Rolling Stones reporter Evan Wright, expanding on his three-part series in the magazine. Wright's book was later made into an HBO mini-series by the same name.

2. Nathaniel Fick, *One Bullet Away: The Making of a Marine Officer* (Boston: Houghton Mifflin Co., 2006), 234.

3. Fick, *One Bullet Away*, 239.

4. Fick, *One Bullet Away*, 242.

5. Fick, *One Bullet Away*, 242.

6. Fick, *One Bullet Away*, 241.

7. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 44.

8. See for example: Shira Maguen et al., "The Impact of Killing in War on Mental Health Symptoms and Related Functioning," *Journal Of Traumatic Stress* 22, no. 5 (October 2009): 435–43; Brett T. Litz et al., "Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy," *Clinical Psychology Review* 29, no. 8 (December 2009): 695–706; Maguen et al., "The Impact of Killing in War on Mental Health Symptoms and Related Functioning"; Shira Maguen et al., "Killing in Combat May Be Independently Associated with Suicidal Ideation," *Depression & Anxiety (1091-4269)* 29, no. 11 (November 2012): 918–23; Shira Maguen et al., "Killing in Combat, Mental Health Symptoms, and Suicidal Ideation in Iraq War Veterans," *Journal of Anxiety Disorders* 25, no. 4 (May 2011): 563–67; Shira Maguen et al., "Killing and Latent Classes of PTSD Symptoms in Iraq and Afghanistan Veterans," *Journal of Affective Disorders* 145, no. 3 (5 March 2013): 344–48; Rachel M. MacNair, "Perpetration-Induced Traumatic Stress in Combat Veterans," *Peace and Conflict: Journal of Peace Psychology* 8, no. 1 (2002): 63–72.

9. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (E-Reads, 2010), loc. 883.

10. Maguen et al., "Killing in Combat May Be Independently Associated with Suicidal Ideation," 921. While there are other possible mediators at play and acknowledged limitations in the research methodologies, it remains that better understanding the experience of killing in war is important if we hope to assist combat veterans in coping with their wartime experiences and to better understand the growing problem of suicide among our returning war fighters. See also: Maguen et al., "The Impact of Killing in War on Mental Health Symptoms and Related Functioning," 443; and Litz et al., "Moral Injury and Moral Repair," 697.

11. Noam Zohar, "Risking and Protecting Lives: Soldiers and Opposing Civilians," ed. Helen Frowe and Gerald Lang, in *How We Fight: Ethics in War*, 1st edition (Oxford: Oxford University Press, 2014), 157.

12. Such a stipulated is clearly stated at the classical headwaters of the doctrine of double effect in Thomas Aquinas' *Summa Theologica*, (II-II, Q. 64, 7, co.) and is carried forward in Paul Ramsey and, most recently, Nigel Biggar, particular *In Defence of War*.

13. Fick, *One Bullet Away*, 182.

14. Karl Marlantes, *What It Is Like to Go to War* (New York: Grove Press, 2011), xi.

15. Fick, *One Bullet Away*, 2006, 242–243.

16. Martin L Cook, *The Moral Warrior: Ethics and Service in the US Military* (Albany, NY: State University of New York Press, 2004), 123.
17. Cook, *The Moral Warrior*, 123–124.
18. Cook, *The Moral Warrior*, 124.
19. Cook, *The Moral Warrior*, 126.
20. Cook, *The Moral Warrior*, 117.
21. Cook, *The Moral Warrior*, 127.
22. Cook, *The Moral Warrior*, 127.
23. Fick, *One Bullet Away*, 243.
24. Fick, *One Bullet Away*, 241.
25. George Marshall, “Speech at Trinity College,” Larry I. Bland, editor, *The Papers of George Catlett Marshall: “We Cannot Delay,” July 1, 1939-December 6, 1941 (Volume 2)* (Baltimore: Johns Hopkins University Press, 1986), 535.

Chapter 13

Grounding British Army Values Upon an Ethical Good

Reverend Dr. PJ McCormack MBE, BD, MTh, PhD (QUB), PhD (Cran), CF

Introduction

The British Army remains one of the finest professional armies in the world. It has retained its reputation as a values-based organization that takes its responsibilities towards its people and its actions seriously. However, moral lapses by a few soldiers in recent years have highlighted the reality that organizational reputation is not a concept that allows room for complacency. As the Army reconfigures towards 2020 and makes the transition from operations to contingency, this is an opportune moment to examine its *values and standards* to determine if they have proved adequate or are in need of being reviewed and their conceptual/ethical basis developed.

This paper will contend that there is a major conceptual flaw in the current explanation of the Army's values. This principally resides in the failure to ground its *values and standards* on an ethical good (ethical foundation), or adequately to explain the ethical principles from which those values may be derived, explained and defended. In their current form, the Army's values are both subjective and relative. Not only is this inadequate, this paper will seek to demonstrate that the values of the Army could and should be grounded upon an ethical good. Although philosophical in nature, this paper is not an attempt to create some new approach to ethics that will satisfy the philosophical sceptic or the ethical relativist. Rather, the intention is to provide a concept for consideration that explicitly derives its premise from those fundamental principles that underpin UK society and are consistent with national and international law. The concept explained in this paper is designed to be both intellectually coherent and, just as importantly, to be practical and useful to soldiers.

There are five sections in this paper. Section 2 will briefly set out a context within which the consideration of the Army's *values and standards* may be brought under external and legal scrutiny. Section 3 will examine what the author of this paper considers to be a major conceptual flaw in the way the Army's *values and standards* are currently presented. Section 4 will explore how the Army's values could and should be grounded upon an ethical good. Section 5 will discuss the strengths and weaknesses associated with the concept of natural rights.

Context

Shortly after the start of hostilities in the first Gulf War, President George H. W. Bush delivered his famous "New World Order Speech."¹ However, far from an anticipated and hugely optimistic "New World Order," following on from the hoped for peace dividend, the general consensus today is that the trend is towards increasing instability and opportunity for confrontation and conflict.² As a consequence, national governments face what scholars refer to as "wicked problems" that defy simplistic answers or approaches.³ The reality in many instances, according to Christopher Coker, is that they cannot be solved,

only “managed until someone finally decides to stop managing it, or the managers run out of resources, time or money.”⁴ It is against this backdrop of “wicked problems” and ethically insoluble dilemmas that Benest states “there is no comparable history of counter-insurgency anywhere in the world to match that of the British record.”⁵ However, The Aitken Report, and more importantly the public inquiry chaired by the retired Lord Justice of Appeal Sir William Gage, highlighted that the actions of a small number of soldiers have undermined the reputation of the British Army.⁶

“The public,” observes Helen McCartney “is often prepared to accept that the armed forces can make mistakes, particularly in combat situations where split-second judgements have to be made. What it cannot tolerate are the reports of brutality, humiliating abuse and torture, particularly in situations where the soldiers’ own lives are not perceived to be in danger.”⁷ One manifestation of this public reaction may be seen in groups like Public Interest Lawyers and some human rights NGOs who are committed to using the law to test the policies and procedures of governments (and public bodies) in law.⁸ This is frequently referred to as “lawfare.” For some it has created a sense that the military is “under siege.”⁹ For others it is seen as a legitimate and “serious activity to ensure that the military adheres to the rule of law and democratic values.”¹⁰ What can be maintained with a reasonable degree of certainty is that the actions and conduct of British soldiers, especially on operations, will continue to be examined using the mechanism of the law through national and international courts.

In the epilogue of his book *A Very British Killing*, Andrew Williams, a professor of law at Warwick University, raises a theme that will become significant in any cases brought before the courts that may arise from future military operations.¹¹ He writes,

However “good” the majority, however small the minority of wrongdoers, it isn’t the condemnation of all for the suffering induced by the acts of the few which is the pressing moral issue ... Instead of recognising the inevitability, the official language is now of “values,” “order” and commitment to standards. Instead of addressing the unavoidable, the design is to ignore it and then apologise for it later. Knowledge, act, apology is the institutional framework... [a] deep-set contempt for others that infected military operations.¹²

However excellent the conduct of the majority of British soldiers, the uncomfortable and historical fact is that during military operations in Malaya, Kenya, Aden, Cyprus, Northern Ireland, Iraq, and Afghanistan, British soldiers have allegedly beaten, abused, and unlawfully killed citizens in those countries.¹³ The critique by Williams can only really be examined through the prism of experience, that is, after the conclusion of the next major operational deployment. Undoubtedly, the creation of an Operational Law Branch to inculcate the Law of Armed Conflict even more fully into British Army training, and the development of British Army Policy on Captured Persons, has already enhanced understanding of these issues within the Army and will continue to do so. However, as Williams has highlighted, the pressing issue is a moral one. He is convinced that as an institution the British Army trains soldiers to be contemptuous of an “enemy” and is therefore cynical of the recourse to the language of values and standards.

Western societies are increasingly skeptical about the use of military force in interventions of choice that have only a tenuous link with national interests. The ethical and legal justification underpinning these operations is vital ground, before and during the operation. When ethical language is used to justify how a calculation for armed intervention is made (e.g., doing the “right thing” by Britain and the people of Afghanistan), morality and ethics become major factors in that conflict.¹⁴ This is not to suggest that they have not been major factors in war up to this point; that would be absurd. However, a paradigm shift has occurred.¹⁵ Ethics and morality have become weapons used by non-state players against states, who are signatories to international humanitarian law but who may well, because of ideological reasons, have repudiated or ignored accepted international conventions.¹⁶ Particularly in Western liberal democracies, the death of non-combatants, regardless of how they were killed, is often sufficient justification to call for an end to an operation.¹⁷ It is essential, therefore, that the ethical basis of the British Army’s values is solid.

Values and Standards: A Conceptual Weakness

In 2000 the British Army published a booklet entitled *Values and Standards*; it was reissued with some modification in 2008. The 2008 edition maintains that “values are the moral principles – the intangible character and spirit – that should guide and develop us into the sort of people we should be.”¹⁸ This booklet currently is the Army’s primary ethical source.¹⁹ The foreword by the Chief of the General Staff states that “our values and standards are vital to operational effectiveness – they are the lifeblood that sustains the Army. They have to be more than words, we must believe in them and live by them.” “they reflect, and are consistent,” the booklet contends, “with the moral virtues and ethical principles that underpin any decent society.”²⁰ This, however, is the only attempt to “ground” the *Values and Standards* in an external source from which an ethical good may be derived or deduced. This was and continues to be a major conceptual weakness. This approach avoids “entering the huge philosophical debates that rage over what the good life is.”²¹ The problem, however, is that without any substantive attempt to ground the Army’s *Values and Standards* in an objective ethical good or ethical foundational, they are conceptually and ethically relative.

The word “standard” refers to “an object or quality or measure serving as a basis or example or principle to which others should conform or by which the accuracy or quality of others are judged.”²² It is used to set acceptable levels that are objective (conforming to a known paradigm), observable (often based on international protocols) and measurable (subject to external verification). Therefore use of the word “standard” in regard to objective, observable and measurable aspects of the military profession is entirely appropriate. For example, the standard required of a professional soldier in regard to weapon handling and shooting attainments is a valid use of the term. However, once the word standard is used in relation to human behavior without regard to an authoritative moral value, claims of objectivity will be difficult to defend. In this instance, standards of behavior reflect the social norms of a particular group. Different social groups might look at the same thing in different ways. While it is entirely appropriate for an organization to stipulate what an

employee should wear during working hours or the standard of behavior when at work, this is a social norm and not an ethical norm. In this regard it is relative.

The word “value” means: One, “the worth, desirability, or utility of a thing, or the qualities on which these depend. Two, worth as estimated; valuation. Three, the amount of money or goods for which a thing can be exchanged on the open market.”²³ In philosophy the word “value” is also used in two specific senses: One, “truth Values” (i.e., primitive abstract objects denoted by sentences in natural and formal languages); and two, “Incommensurable Values” (i.e., concepts such as liberty and equality, which are sometimes said to be incommensurable, in the sense that their value cannot be reduced to a common measure).²⁴ In the *Values and Standards* booklet the word “values” is employed in the context of “moral value:” i.e., that this value has a moral or ethical good *Values and Standards* insists that its values are not abstract concepts, stating that they are “moral virtues and ethical principles that underpin any decent society.” What it makes no attempt to do is articulate what those “ethical principles” are. It assumes that they exist and understood by every soldier in the Army, including the relationship that exists between those ethical principles and the Army’s values, and require no further explanation.

It is clear that some ethical standards must be shared for a culture or a society to exist in the first place and that frequently there are common values that do not vary substantially from culture to culture.²⁵ Our enemies can have their own version of the values we espouse.²⁶ For example, the Schutzstaffel or SS had as its official motto “Meine Ehre heißt Treue” or “My Honor is Loyalty.” Given the tenacity of their fighting spirit during the Second World War, it is doubtful whether any could question their loyalty as soldiers either to each other or to their cause. In the death camps the SS had a coherent ethic in which some lives were valued and others not.²⁷ The SS did not value all human life or subscribe to the proposition that all human beings have an inherent worth and dignity. For this reason, few would associate the SS with an organization known for its moral conduct. In this regard loyalty, as an abstract concept, is morally relative or subjective. Another extreme version of this argument, it could be argued, is that the grouping calling itself Islamic State (IS) could maintain (hypothetically, of course) that it shares a version of the five of the six core values in *Values and Standards*.²⁸

In a post-modern age values are often understood as being subjective, and therefore they can mean whatever an individual or group wants them to mean.²⁹ Postmodernist thinkers maintain that there is no “truth.” They reject the belief that there are any absolutes in the objective realm. Nash observes that postmodernism has at its heart an “eminent ‘lack of trust’ in language as a medium for the representation of truth, its unsleeping attention to the fine print of what is said, its rigorous aim to search out inconstancy, inconsistency and contradiction, and its express intent on the dismemberment of foundational authority.”³⁰ The dismemberment of foundational authority associated with post-modernism has had profound implications. What emerges is a multiplicity of truth or value statements, each of which is of equal value and importance though not necessarily related. These truth or value statements can have no objective relationship with each other because in post-modern thought there are no meta-narratives (grand narratives within which every aspect of life is explained or given meaning through its relationship with the “big story”). Post-modern

thought has created a world of subjectivity devoid of any external reference points, for there can be none in its thought.

Its ideas are grounded in a linguistic indeterminacy, which is driven by a “discourse of suspicion” that is compelled to deconstruct all “texts” or “narratives” to expose the power issues that underlie them.³¹ This “discourse of suspicion” may be seen in a persuasive dictum of modern academia, in which some hold that language is a social construct and that all human discourse is conditioned by the socio-political nature of reality.³² Language therefore is a cultural creation expressing the socio-political nature of a particular community. From this perspective, meaning is ultimately a social construction.³³ Language does not reveal meaning, it constructs meaning. An individual’s use of language reveals how the society constructs its basic meanings and values and the weight given to those meanings and values. The postmodernist’s “discourse of suspicion” drives the requirement to deconstruct the “text” or “narrative” to uncover the connections between knowledge and power.³⁴ “Although artificial linguistic constructions are designed to convey the illusion of truth, they are actually a cover for the power relationships that constitute the culture.”³⁵ What emerges from this reasoning is a linguistic indeterminacy: history, truth, meaning, etc., become “islands of discourse,” a state of existence where anything goes.³⁶

The post-modernist thinker hearing the phrase “moral virtues and ethical principles that underpin any decent society” is likely to ask a wide range of questions. For example, “What are these ethical principles? What gives them legitimacy? What makes a society decent? In what way is the UK a decent society as opposed to another, and how can one adopt a position of moral superiority by which to determine decency? Surely the notion of decency is nothing more than a statement of power, which in turn creates the sense of arbitrary and undefined notions that become the source of values?” Although this may seem an extreme version of a post-modern critique, it is one that nevertheless must be addressed, especially in any battle of ethical narratives against an enemy such as the IS.

A major practical problem in not grounding the Values of the British Army in an objective ethical good may be detected in this extract from the Aitken Report:

The evidence from the cases of deliberate abuse with which this report is concerned suggests that there was a failure to live up to those values and standards by some of those involved – not just the accused, but also some of the other individuals involved on the periphery of the investigations; and not just the soldiers, but some of their commanders as well. A particular example of this failing was the lack of co-operation experienced by the Service police in conducting investigations, and what the judge in the Baha Mousa case referred to as the “wall of silence” from some of those who gave evidence. This is not a form of behavior limited only to the Army; but it is perhaps exacerbated in an organization that trains its people in the virtues of loyalty, and which stresses the importance of cohesion. The challenge is to educate our people to understand that lying to the Service Police, or having “selective memory loss” in court, in order to protect other members of their unit, are not forms of loyalty, but rather a lack of integrity.³⁷

Many reading this extract might be inclined to agree with Brigadier Aitken's assertion that "selective memory loss," which was referred to as the "wall of silence" in court, was not a form of loyalty. The problem is that it was a form of loyalty, at least to the soldiers involved. What it was not was the form of loyalty the senior command of the Army, or a majority of the country, found acceptable. How can this disconnect arise?

If values are subjective, they can mean whatever an individual or group wants them to mean and therefore can become relative to the needs of a particular group. Even when located within a "decent society" the ethical principles alluded to in the *values and standards* are not always normative for soldiers. This situation is exacerbated when soldiers find themselves in a situation where the normal social reference points are subjected to overwhelming operational pressures. In his book *Humanity: A Moral History of the Twentieth Century*, Jonathan Glover discusses the atrocity of My Lai and describes an erosion of moral resources, noting that moral restraints had been eroded by degrees which at first seemed relatively small.³⁸ There had been an incremental ethical drift in which the perceived abnormality of the lived experience of the soldiers began to give rise to the notion that the normal moral reference points did not apply. For some, many of the normal reference points can begin to fade or appear irrelevant in austere conditions.³⁹

The psychologist Philip Zimbardo, who employs a behaviorist approach to psychology, has explored the question of why "good" people turn evil.⁴⁰ Zimbardo uses the Jewish story of Lucifer's metamorphosis into Satan to argue that good people can turn evil due to powerful situational forces. He argues that a process of transformation can occur within a context or setting in which the human agent starts to behave inappropriately because they have been shaped by situational forces over which they have no control. Individuals begin to behave in ways that would have been impossible to predict in advance.⁴¹ Group conformity, peer pressure, latent racism, combined with a potential absence of accepted societal norms, combine to create a situation where the reference points with which we grow up subtly begin to change. In this setting, "values" do not disappear; they become increasingly relative and subjective in a context which may have been shaped by situational forces over which individuals have little control. In this setting "loyalty" to those sharing the same dangers may seem very different.

However unpalatable it may be, the version of loyalty that resulted in the "wall of silence" in the Baha Mousa case was a form of loyalty; it just had acquired a radically different and relative focus.

Grounding Values Upon an Ethical Good⁴²

The UK has been shaped by centuries of theological, legal, philosophical, political and social theories. Today, millions live their lives with little knowledge of the intellectual forces that combined to create the setting in which we are immersed, live and breathe. The radical and revolutionary ideas that came to shape and mold the Western world are largely unknown to many. It is, of course, much more complex than this. The Canadian philosopher Charles Taylor describes the setting in which we live as our modern social imaginary, "that common understanding that makes possible common practices and a widely shared sense of legitimacy."⁴³ It is not simply a set of ideas; rather our social imaginary enables us

to make sense of the practices of our society.⁴⁴ One of the characteristics of a social imaginary is that it “can eventually come to count as the taken-for-granted shape of things too obvious to mention” and “seems the only one that makes sense.”⁴⁵ It is precisely because of the “too obvious to mention” nature of ideas that shaped the modern world that their radical and revolutionary nature has been largely forgotten by the majority. This section will argue that it is upon these ideas, embedded within our national DNA, that the *Values and Standards* of the British Army should be grounded and expounded.

The arguments in this section are based on the notion of the retrieval of certain ideas in moral philosophy, which according to Nigel Biggar have been enjoying a revival both in philosophical and theological circles.⁴⁶ Recent examples are, at least to some extent, Michael Walzer’s *Just and Unjust Wars* and David Rodin’s *War & Self-Defense*.⁴⁷ The ideas being retrieved are moral intuitions which are uncommonly deep, powerful and universal and which involve claims about the nature and status of human beings.⁴⁸ For Taylor, our deepest moral instincts involve “our ineradicable sense that human life is to be respected,” and this is what Hoban refers to as the life value. This paper will advocate that the values of the British Army should be derived from the proposal that:

All human persons have a shared moral status, a status based upon fundamental and inalienable natural rights.

This proposition recognizes the ineradicable sense that all human persons possess an inherent dignity and worth, expressed in the recognition that all human persons possess as inalienable natural rights the right to life and liberty. It is worth briefly noting several points before a more careful discussion.

- This proposition expresses fundamental ideas upon which UK society is built.
- This proposition is consistent with UK National Law.
- This proposition is consistent with the United Nations Universal Declaration of Human Rights.
- This proposition is consistent with the International Law of Armed Conflict.
- This proposition is consistent with the European Convention on Human Rights.
- The British Army will never be in a position when it is not subject to UK National Law at home or overseas and will always function under the norms of the International Law of Armed Conflict when deployed on operations.

The Geneva Convention (IV) of 1949 and the International Law of Armed Conflict, which has emerged since the end of the Second World War, may be understood as attempts to codify in law fundamental moral principles. What the proposition advocated in this paper would do, if accepted, is recognize that the legal obligations and the ethical policy of the British Army could be derived from the same set of fundamental principles: inalienable natural rights, possessed by all human persons.

Historically, the intellectual transformation from a Natural Law concept of man to that of man possessing Natural Rights took place in the seventeenth century.⁴⁹ The transformation was not merely evidence of an academic shift but underpinned an elemental change

in the way society was imagined. It is only “since the sixteenth century ... [that] people in the West have come to understand “society” to mean an association of individuals.”⁵⁰ A pre-modern social imaginary was based upon a hierarchical structure, in which society was made up of different orders.⁵¹ In the ancient world there was a natural order of things in the cosmos, which was then manifested in a defined and established social order.⁵² There was a natural hierarchy, a superior class, who were born to command and others to obey.⁵³ Taylor refers to this social model as a mode of “hierarchical complementarity.”⁵⁴ In other words, one’s identity was directly relational to function within the established order; a person’s role in society gave him or her their essential identity.⁵⁵ The individual confronted “the world as a member of this family, this household, this clan, this tribe, this city, this nation, this kingdom. There is no “I” apart from these.”⁵⁶

The canvas upon which the modern individual is cast has a rich and complex history. An integral weave in this tapestry of history is the developments that emerged in relation to an individual (in the pre-modern sense) and the individual’s relationship to the law. For example, in the twelfth century we can see how “the papacy stood out against any claim by secular rulers to be the sole source of law.”⁵⁷ The popes and canon jurists sought to establish a legal system based upon the equality of souls in the eyes of God.⁵⁸ Canon law began to develop around a new theory of justice that rested upon moral equality.⁵⁹ A famous example of this developmental change is Magna Carta signed in 1215, which established the principle that the king’s will in relation to the law could not be arbitrary. From Abelard in the twelfth century to Ockham in the fourteenth, the idea continued to develop, so that individuals rather than social classes “became the focus of legal jurisdiction.”⁶⁰ It is in this context of jurists, steeped in theological learning, that the life and work of Hugo Grotius must be set.⁶¹

Hugo Grotius (1583-1645) was a “towering figure in philosophy, political theory, and law and associated fields during the seventeenth century” and is credited by many with being the father of International Law.⁶² The dominant paradigm in ethics and politics up to the Enlightenment was some version of a natural law theory.⁶³ Although heavily influenced by Greek philosophy it had received a systematic impetus with the work of Thomas Aquinas in the thirteenth century.⁶⁴ What made the approach of Grotius so distinctive is that he did not seek authority for his theory of natural rights through recourse to the supernatural or divine. Part of his intention was to restrain and regulate the religious wars in Europe by demonstrating that natural rights could be articulated without resort to religious authority. Though Grotius was a Christian, he wanted to base his argument on the conceptual notion that natural rights exist even if, for the sake of argument, there is no God: “...though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs.”⁶⁵ What is foundationally significant in Grotius’ argument is his contention that there are natural rights, which are not merely arbitrary rules (human law) or rules revealed by God (divine law), but rights that are the natural possession of each individual.⁶⁶ In other words, regardless of the nature of government or the revelation of divine law, each human being was the possessor of certain natural rights which are “the common right of all mankind.”⁶⁷ This would be subsequently developed by the English philosopher John Locke.

John Locke (1623-1704) has been described as among the most influential philosophers of the modern period.⁶⁸ Two of his best known works are *An Essay Concerning Human Understanding* (1690) and *Two Treatises of Government* (1689).⁶⁹ In *An Essay*, Locke attacks the idea that humans are born with innate ideas.⁷⁰ As an empiricist he maintained that knowledge is derived from human senses.⁷¹ For Locke, humans are born with a mind akin to a blank slate (*tabula rasa*) on which, through experience, knowledge is written. Although *An Essay* is an example of early English empiricism, by attacking the idea of innate principles Locke is also attacking authoritarianism.⁷² This is an important point when considering Locke's understanding of social theory and politics. Both *An Essay* and *Two Treatises* were written when Locke was in exile in Holland until the Glorious Revolution of 1688. For Locke, all men were naturally free and therefore were not subject to pre-existing ideas (innate principles) that directed, or pre-ordained, the form of legitimate political government, for example, the Divine Right of Kings.

In *Two Treatises*, Locke articulates ideas that would later influence the like of Thomas Jefferson and many of the Founding Fathers of America and provide the foundational principles that underpin modern Western democracy (the social contract, inalienable rights, and the belief that the authority for government is derived from the sovereignty of the people).⁷³ The opening sentence of the UK's 2010 *National Security Strategy* states that, "in a world of startling change, the first duty of the Government remains: the security of our country."⁷⁴ This statement is an articulation of the idea of contract theory or the notion of a social contract between a people and their government. Thomas Hobbes in his work *Leviathan* (1651) was the first to articulate this idea. Both Hobbes and Locke referred to man being in a state of nature, that is, an imagined state of existence prior to any form of social structure or government. For Hobbes this state of nature was marked by "continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short."⁷⁵

Hobbes' concept of natural rights underpinned his vision of the state of nature as nasty, brutish and short. In his argument, all men had the right to all things, which created the circumstances for a perpetual "condition of war."⁷⁶ Chaos as a Hobbesian state of nature would only be avoided if everyone accepted some diminution of their universal right and rationally decided to accept an agreed system of laws and punishment. For Hobbes it was "the terror of some punishment greater than the benefit they expect by the breach of their covenant" that would constrain men, "and to make good that propriety which by mutual contract men acquire in recompense of the universal right they abandon."⁷⁷ *Leviathan* was authorized by the consent of "every man with every man" to use the power granted to him, to enable him "to form the wills of them all, to peace at home, and mutual aid against their enemies abroad."⁷⁸

Locke presented a radically very different view, in which "men living together according to reason without a common superior on earth, with authority to judge between them, is properly the state of Nature."⁷⁹ In this condition, all men are "naturally free, equal and independent" and through the use of reason live together without the Hobbesian vision of uninterrupted war.⁸⁰ One of the key intellectual ideas that became so influential is that, in a

Lockean state of nature, natural rights pre-exist social structures and forms of government. Consequently,

The only way anyone can strip off his natural liberty and clothe himself in the bonds of civil society is for him to agree with other men to unite into a community, so as to live together comfortably, safely, and peaceably, in a secure enjoyment of their properties and a greater security against outsiders... When any number of men have in this way consented to make one community or government...the majority have a right to act on behalf of the rest and to bind them by its decisions.⁸¹

It is not difficult to see in this extract the intellectual shoots that would later give rise to the idea of democracy as imagined in many Western states. The point that must be carefully noted, however, is that the principle of democracy is underpinned by the idea of natural rights. Man, according to Locke, had a title “to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world” and had “by nature a power to preserve his property – that is, his life, liberty, and estate.”⁸² These were rights that could not be given away and “why Locke. . . had to introduce the notion of “inalienability.””⁸³ The influence of Locke’s political philosophy may be detected 87 years later in one of the most famous sentences of *The Declaration of Independence*:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.⁸⁴

The Founding Fathers in America were acutely aware that the majority could be tyrannical in relation to a minority grouping; “indeed, they regarded democratic despotism as more dangerous than monarchical despotism, since a despot can be resisted more easily than a majority. Only a theory of natural rights, which defines the proper limits of government, can morally empower minorities to demand that their rights be respected, whatever the form of a government may be.”⁸⁵ The American *Bill of Rights*, therefore, should be seen as a creation to protect American citizens from government, not the government from its citizens. The UK’s *Bill of Rights* (1689) was the forerunner and derived from the same principles.

The revolutionary nature of the consequences contained within the theories of natural rights associated with Grotius and Locke, according to Taylor, would not have been obvious to those who initially embraced them, though they seem obvious to us today.⁸⁶ Indeed, “modern modes of individualism seemed a luxury, a dangerous indulgence.”⁸⁷ However, when viewed from the 21st Century, it can be argued that Locke and Jefferson’s understanding of natural rights fell significantly short. For example, Donnelly contends that Locke “clearly envisioned them to be held only by propertied white Christian men. Women, “savages,” servants, and wage laborers were never imagined to be holders of natural rights at the end of the seventeenth century.”⁸⁸ These criticisms, however, are only valid up to a point. Contained within the logic of the Grotian-Lockean theory of the individual were

the intellectual drivers that would set in motion changes in the way that people imagined their relationship to each other within a community.⁸⁹ For example, Dr. Martin Luther King quoted from the *Declaration* to powerful effect in his magisterial *I Have a Dream* speech in August 1963.⁹⁰ For him, the architects of the new republic had signed “a promissory note to which every American was to fall heir.” Universal suffrage, full emancipation, and equal rights would ultimately be derived from the fundamental principles articulated by Grotius and Locke. Grotius and Locke were men of their century, but the principles they articulated were foundational in establishing modern Western democracies.

Strengths and Weaknesses of Natural Rights Theory

Natural Rights theory has had its passionate defenders and its vehement assailants down the centuries. Its heyday, though, proved relatively short. Even in America, whose *Constitution* was imbued with Lockean ideas, it had become by the early twentieth century “almost a fashion for Americans to sneer at the notion of inalienable rights.”⁹¹ In eighteenth century England it came under sustained attack by both conservative and liberal thinkers. Edmund Burke produced one of the best known attacks on the French Revolution in his work *Reflections on the Revolution in France* (1790). Burke was adamant that “Government is not made in virtue of natural rights.”⁹² He was a political realist and attacked the metaphysical ideas contained in natural rights: “the moment you abate anything from the full rights of men, each to govern himself, and suffer any artificial, positive limitation upon those rights, from that moment the whole organization of government becomes a consideration of convenience.”⁹³ Burke viewed the idea of political equality between all as “that monstrous fiction which [inspired] false ideas and vain expectations into men destined to travel in the obscure walk of laborious life.”⁹⁴

The most famous attack on natural rights theory is that of the English philosopher Jeremy Bentham in his work *Anarchical Fallacies*.⁹⁵ Bentham regarded the *Declaration of Rights* issued during the French Revolution on the “fundamental principles of government” as “execrable trash” produced by “the choicest talents the French nation have produced.”⁹⁶ It would “sow the seeds of anarchy broad-cast: in justifying the demolition of existing authorities.”⁹⁷ As for the notion of natural rights he was scathing:

Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts.... And of these rights, whatever they are, there is not, it seems, any one of which any government *can*, upon any occasion whatever, abrogate the smallest particle.⁹⁸

A modern variant of Bentham’s “nonsense upon stilts” is Alasdair MacIntyre’s assertion that “the truth is plain: there are no such rights, and belief in them is one with the belief in witches and in unicorns.”⁹⁹ Bentham rejected the Lockean notion that rights were anterior to the establishment of government.¹⁰⁰ Without government, he argued, there can be no laws and therefore no security, no possibility of property, liberty, or protection of weak against the strong.¹⁰¹ It was law, therefore, that provided rights for individuals. Until the end of the Second World War, it may be argued, this had become the dominant position regarding rights. However, the rise and fall of Nazi Germany initiated the idea that certain actions are absolutely wrong, no matter what the circumstances, regardless of

whether those actions had been officially authorized by laws and decrees of government.¹⁰² Bentham's argument was horrifically exposed as fundamentally lacking in the policies of Nazi Germany, Stalinist Russia or Maoist China. In contrast, the safeguards explicit and implicit within the *Bill of Rights* (1689) and the American *Constitution* and its subsequent *Bill of Rights* were based upon the natural rights of each individual. It was not the law of government that granted or established rights but the role of government to safeguard the pre-existing rights of individuals that were inalienable regardless of government.

Perhaps the most important question that must be addressed is that of foundational appeal or authority. This has been central to the whole concept of "natural rights" both negatively and positively. In simple terms, why does X have authority? It is the "point beyond which there can be no answer to questions of 'why.'"¹⁰³ The signatories to the *Declaration of Independence* maintained that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights." Two of the classic appeals to a foundational authority are unmistakably articulated in this defense of natural rights: one, that such a truth is self-evident; and two, that these truths have their foundational authority in their relationship to God the Creator. Thomas Jefferson, who drafted the *Declaration*, was a child of the Enlightenment.¹⁰⁴ As a scholar, he had been persuaded by the argument that "natural rights" were philosophically "self-evident," but as a politician he recognized that religious belief was foundational for the overwhelming majority of those he was seeking to influence. In this regard, the *Declaration* is a statement of early Enlightenment philosophy and/or Christian religious beliefs.

In the Enlightenment period, any appeal to the divine or a supernatural source of authority came under increasing pressure. Truth, at least in the West, had to be tested at the bar of reason. Appeals to God as the final authority became intellectually unpopular. The German philosopher Immanuel Kant, however, "abolished God and made man God in His stead. We are still living" according to Iris Murdoch, "in an age of Kantian man, or Kantian man-god."¹⁰⁵ The irony is, this was not Kant's objective. Rather than abolish faith, Kant tried to save it.¹⁰⁶ Pasternack and Rossi observe that, in the *Critique of Pure Reason* (1781) – "transcendental Dialectic's Ideal of Reason" – while Kant argues that there is no viable argument for God's existence, "none of this challenges the intelligibility of religious doctrines. So long as they are not self-contradictory, they are thinkable. It is just that their truth or falsehood cannot possibly be known."¹⁰⁷ This does not result in agnosticism, in Kant's philosophy, because "he identifies faith as our third legitimate mode of holding-to-be-true [*Fürwahrhalten*]. The implications, however, of Kantian rationality were profound."¹⁰⁸

Writing against the background of the First World War, the German sociologist Max Weber maintained that the modern world had become "disenchanted;" this had been part of the legacy of the rationalism and ongoing process of the intellectualization of life that had marked the rationalism of Enlightenment Period.¹⁰⁹ For Weber disenchantment was "the knowledge or belief that ... there are no mysterious incalculable forces that come into play, but rather that one can, in principle, master all things by calculation."¹¹⁰ The German Philosopher Friedrich Nietzsche had understood the implications of Kant's argument for religion. In his book *Thus Spoke Zarathustra*, Nietzsche depicts Zarathustra coming down from his mountain solitude announcing that "God is dead."¹¹¹ His use of the phrase "God

is dead” is an indication of his awareness that the logical empiricism of the Enlightenment had killed the need for God and the morality that a divine order gave.¹¹² Nietzsche understood that this would ultimately lead to nihilism.¹¹³ When Weber spoke of the disenchantment of the world, it was all embrative; no aspect of life held mystery or supernatural; everything could be objectified, classified and exploited – including humanity.

In epistemology (theory of knowledge) a proposition to be may be said to be self-evident, if the truth it asserts contains its own evidence or proof and requires no need of further evidence or demonstration. Historically, advocates of natural rights have maintained that they are self-evident truths. Cognitivists maintain that ethical propositions can be true or false. Noncognitivists, however, reject the notion that ethical statements are true or false but see them as expressions of emotions, attitudes or preferences.¹¹⁴ For example Mary Macdonald accepted that all or most human beings are intelligent or rational and that what could be known by reason is certainly true.¹¹⁵ However this, she maintained, says “nothing about what *is*” [emphasis original], and those who defend natural law and natural rights “constantly confuse reason with right.”¹¹⁶ For MacDonald ethical statements reveal the stand taken not the truth of the statement. For example, “to assert that “Freedom is better than slavery” or “All men are of equal worth” is not to state a fact but to choose a side. It announces *This is where I stand*.”¹¹⁷ In this regard MacDonald stands in the sentimentalist tradition of the Scottish philosopher David Hume and the logical positivists like AJ Ayer.¹¹⁸

Positivists “wanted philosophy to follow science, throwing out all that did not conform to empirical criteria of meaning.”¹¹⁹ In 1929 Ludwig Wittgenstein stated that “ethics so far as it springs from the desire to say something about the ultimate meaning of life, the absolute good, the absolutely valuable, can be no science.”¹²⁰ The British philosopher AJ Ayer argued that there is “no criterion by which one can test the validity of the judgements in which they occur.”¹²¹ For Ayer, a statement like “stealing money is wrong” has no factual meaning, “that is, expresses no proposition which can be either true or false. It is as if I had written “stealing Money!!”¹²² The addition of “is wrong” in the statement about stealing money does not state something that is true or false but expresses my personal feelings or emotion about the action. Logical positivism and noncognitivists reject the proposition that ethics can say anything factual about something being true or false; it was particularly strong at a time in the twentieth century when science was revered. However, in a postmodern age science no longer holds the key to allaying public fear, particularly in an age marked by the pervading nature of risk. Many people in Western societies in the twenty-first century have a suspicion both of science and of some technologies associated with it (for example, animal cloning, GM crops, and stem cell research). The certainty that logical positivism associated with science, no longer exists.

Logical positivism forced philosophers to look more closely at the use of language even though it represented a particularly narrow view of language.¹²³ Take for example Ayer’s use of the sentence “stealing money is wrong,” which he maintains says nothing true or false. What happens if the subject of the verb to be is altered in this fashion: “the Holocaust was wrong.” In the logic of Ayer’s argument, this statement says nothing that is true or false but only expresses my feelings about the subject. Or as MacDonald might say, the statement “the Holocaust was wrong” does not state a fact only my choice of what

side I have taken on the subject of the Holocaust. This is an inadequate ethical response. The Holocaust is not simply a word; it was a real and horrific event that stands as a blight against humanity. The truth or falsehood of the statement cannot simply reside in an individual's emotional response. Neither can it be reduced to the inadequacies of language to express the truth of propositions. By reducing the truth or falsehood of the statement "the Holocaust was wrong" to the emotional involvement of individuals logically imagines a scenario in which the emotional response might be different, in which case the Holocaust could be either ethically wrong or right.

Life is not an emotional response; it is the basis of existence in an existential sense. "Life," contends Hoban, "is an absolute and universal value because it is a fundamental requirement of all human existence."¹²⁴ In this regard life is a binary code, 1 or 0, on or off, living or dead.¹²⁵ To contend that the statement "life is good" is ethically meaningless or is nothing more than an emotional response is profoundly inappropriate. Statements such as "I like ice cream" may indeed reflect both an emotional as well as factual response. In contrast, individual life and personal existence are existentially basic. When faced with an existential threat, life will invariably struggle to survive. For cognitively aware species, this struggle is more than mere animal instinct; invariably it will involve the conscious awareness of the consequences of any impending threat to life. Death is not an emotion, it is fact. Life is not an emotion, it is fact, even though it may evoke a bewildering array of emotions in its journey. Life from this perspective is the basic good; without life nothing is possible for any individual. Deriving an ethic from the primary good is one of the main intellectual positions of this paper.

Taylor makes the observation that "the average person needs to do very little thinking about the basis of universal respect, for instance, because just about everyone accepts this as an axiom today."¹²⁶ This of course will not satisfy the philosophic sceptic.¹²⁷ Someone who is determined to doubt or question all forms of truth statements will never be satisfied with arguments about foundational theories. This, however, is irrelevant. The purpose of this paper is not to produce a concept that will convince every philosophical sceptic who chooses to challenge the basis of the British Army's values. Rather the goal is to ground the Army's values upon an ethical good that can be defended as internally coherent and consistent with the foundational principles that underpin UK society, its system of government and its responsibilities to international norms and conventions. If the proposition that all knowledge is based upon some aspect of belief is accepted, then it is possible to realise that some beliefs are properly basic and require no additional evidence other than that about which I cannot be mistaken.

The concept of natural rights is derived from the notion that there "are moral beliefs which cluster around the sense that human life is to be respected and that the prohibitions and obligations which this imposes on us are among the most weighty and serious in our lives."¹²⁸ Natural rights predate the idea of human rights by some 300 years, and they are intellectually distinct from the modern notion of human rights. Nevertheless, natural rights theory has profound implications for the concept of human rights. For Machan, "resting human rights on the ordinary moral discourse or the moral intuitions of one's community will not provide them with universal significance."¹²⁹ Human rights must not be reduced

to the emotivism of personal feelings. Locke imagined humanity possessing inalienable natural rights and a desire to live together in a social setting. Natural rights are the implicit principles required of moral agents and their commitment to life in society.¹³⁰ They are also a fundamental support to human rights and the claims contained within the major charters on human rights.

The theory of natural rights is not only internally consistent but affirms the foundational importance of ordinary life, the dignity and inherent worth of each individual and the universal basis upon which the concept of human rights rests.¹³¹ For Defense, a military ethic built upon a natural rights theory, strictly limited to life and liberty, would provide the ethical foundation currently absent from documents like *values and standards*.

Conclusions

The British Army is one of the most highly respected institutions in the United Kingdom, despite incidents such as Baha Mousa. However, it is likely that in future operational deployments it will continue to be placed under intense scrutiny and any alleged breaches of good conduct or behavior will be tested in law by NGOs or groups like Public Interest Lawyers. Doing nothing or simply doing what was done more efficiently will be examined in either UK or international courts. In addition, the ethical dimension to modern operations will only intensify, especially as potential adversaries increasingly use ethics as a powerful weapon against any political narrative underpinning interventions of choice.

This paper has argued that there is a major conceptual flaw in the failure to ground the Army's *values and standards* on an ethical good, from which its ethical principles and organizational values may be derived, explained and defended. In their current form, they are subjective and relative. Other groups, with which the Army would not wish to be associated morally, could (at least in theory if not in practice), claim that they had the same values – with the exception of “Respect for Others.” Because the *values*, as currently articulated, are subjective in character, cases such as Baha Mousa have demonstrated that values like loyalty can adopt a radically different and relative focus in some situations, causing reputational damage to the Army. The main contention of this paper is that the values of the Army should be derived from the proposition, **all human persons have a shared moral status, a status based upon fundamental and inalienable natural rights**. This would mean that the legal obligations and the ethical policy of the Army would be derived from the set of fundamental principles upon which British society is built. In essence, it would be an articulation of the unexplained ethical principles alluded to in the current *values and standards* booklet. The same principles are enshrined in British law, the International Law of Armed Conflict, the United Nations *Universal Declaration of Human Rights* and the European Convention on Human Rights, of which the UK was one of the main architects.

This would be a bold decision, despite resurgence in interest in the concept of natural rights and ethics. Philosophical sceptics would attack the notion of natural rights. However, most people will instinctively understand that the life value is one of the most (if not the most) powerful motivators in our lives. Life is the basic good. “The first duty of the Government remains: the security of [the] country.”¹³² The Armed Forces of the UK are essential in the defense of the life of the nation and its citizens. If the concept that the Army's

values should be derived from the ethical premise of the defense of life be accepted, not only would that be a powerful statement of intent to the public that the British Army's ethic is based upon the fundamental principles of British society; it would also demonstrate to its critics that it is prepared to make the kind of bold strategic decisions necessary to prepare its people to deal with the ethical and legal complexity of modern warfare.

Notes

1. For a copy of the full text, see <http://www.historyplace.com/speeches/bush-war.htm> (accessed 12 April 13). In it Bush contends that: This is an historic moment. We have in this past year made great progress in ending the long era of conflict and cold war. We have before us the opportunity to forge for ourselves and for future generations a new world order -- a world where the rule of law, not the law of the jungle, governs the conduct of nations. When we are successful – and we will be – we have a real chance at this new world order, an order in which a credible United Nations can use its peacekeeping role to fulfil the promise and vision of the UN’s founders.

2. See Derek Braddon, *Exploding the Myth The Peace Dividend, Regions and Market Adjustment* (Bristol: University of the West of England, 2000). Braddon maintains that, with few notable exceptions, the expected peace dividend after the end of the Cold War failed to materialise, 182). See also DCDC, *Future Character of Conflict* (MOD UK, 2010), 4; DCDC, *Global Strategic Trends – Out to 2040* (MOD UK, 2010), 15.

3. See Horst W.J. Rittel and Melvin M. Webber, “Dilemmas in a General Theory of Planning,” in *Policy Science* (1973) Vol 4, 155-169 and Christopher Coker, *War in an Age of Risk* (Cambridge: Polity, 2009), 128-129.

4. Coker, *War in an Age of Risk*, 156.

5. See Marcus Schulzke, “Ethically Insoluble Dilemmas in War,” in *Journal of Military Ethics* (2013) Vol 12, No 2, 95-110. See also D. Benest, “Atrocities in Britain’s Counter-Insurgencies,” in *The RUSI Journal* (2001) Vol 156, No 3, 80.

6. *The Aitken Report: An Investigation into Cases of Deliberate Abuse and Unlawful Killing in Iraq in 2003 and 2004* (25 January 2008), 5. See also <http://www.bahamousainquiry.org/index.htm> (accessed 1 October 2014).

7. Helen McCartney, “The Military Covenant and the Civil-Military Contract in Britain,” in *International Affairs* (2010) Vol 86, No 2, 416.

8. Perhaps the most well known in the UK is Phil Shiner who leads a team of legal experts at Public Interest Lawyers. See www.publicinterestlawyers.co.uk/people.php (accessed 1 October 2014). The REDRESS is one example. On its website it states that “REDRESS is a human rights organization that helps torture survivors obtain justice and reparation. See www.redress.org/about-redress/who-we-are (accessed 1 October 2014). This point is made in AT Williams, *A Very British Killing: The Death of Baha Mousa* (London: Vintage, 2013), “using the law to enforce the law” (172). This book won the Orwell Prize for Political Writing in 2013.

9. Admiral Sir Michael Boyce, quoted in “Lawyers Besiege Army Over Iraq Abuse,” *The Guardian*, (25 July 2005).

10. See Charles J. Dunlap, “Lawfare Today: A Perspective,” in *Yale Journal of International Affairs* (2008), 146. At the time of writing this article, Dunlap was the Deputy Judge Advocate General of the US Air Force.

11. This book is a finely detailed and carefully argued review of the investigation into the death of Baha Mousa conducted by the Royal Military Police both in Iraq and the UK, the subsequent Courts Marshall of those prosecuted in relation to this death and the three-year-long public enquiry chaired by Sir William Gage.

12. Williams, *A Very British Killing*, 291.

13. See Benest, “Atrocities in Britain’s Counter-Insurgencies,” in *The RUSI Journal* (2001) Vol 156, No 3, p80- 87; “A Liberal Democratic State and COIN: The Case of Britain, or Why Atrocities Can Still Happen” in *Civil Wars* (2012) Vol 14, No 1, 29-48.

14. See Gordon Brown’s speech, <http://news.bbc.co.uk/1/hi/8237207.stm> (accessed August 2011).

15. See PJ McCormack, “You’ve Been Silent Padre,” in *Military Chaplains in Contention* (Aldershot: Ashgate, 2013).

16. See Mary Habeck, *Knowing the Enemy: Jihadist Ideology and the War on Terror* (New Haven & London: Yale University Press, 2006), 74.

17. See http://www.churchofscotland.org.uk/news_and_events/news/articles/kirk_says_afghan_war_cannot_be_justified (accessed August 2011). The report *Just War Criteria and the War in Afghanistan* produced under ACTS (which is comprised of representatives of the Roman Catholic Church, Scottish Episcopal Church, Methodist Church, Church of Scotland and the Religious Society of Friends) states: There is still no UN mandate to support the legitimacy of the OEF offensive action against the Taliban; the ISAF force is having very limited success in stabilising Afghanistan; and unacceptable levels of civilian casualties are continuing. Overall, as long as foreign troops remain, it seems that the situation is being inflamed (para 26).

18. *Values and Standards of the British Army*.

19. Stephen Deakin, “Ethics and the British Army’s Values and Standards” in *The British Army Review* (2006) No 140, 39 makes the same point.

20. *Values and Standards*, para 3, 2.

21. Deakin, “Ethics and the British Army’s Values and Standards,” 40.

22. *The Concise Oxford Dictionary* (Oxford: Oxford University Press, 1991).

23. *The Concise Oxford Dictionary*.

24. See Yaroslav Shramko and Heinrich Wansing, “Truth Values,” Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), <http://plato.stanford.edu/archives/sum2014/entries/truth-values/> (accessed 8 May 2014). See also Hsieh, Nien-hê, “Incommensurable Values,” *The Stanford Encyclopedia of Philosophy* (Fall 2008 Edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/archives/fall2008/entries/value-incommensurable/> (accessed 8 May 2014).

25. David Whetham, “Ethics, Law and Conflict,” David Whetham (editor), *Ethics, Law and Military Operations*, (Basingstoke: Palgrave Macmillan, 2011), 17.

26. Jack Hoban, *The Ethical Warrior: Values, Morals & Ethics* (Spring Lake: RGI, 2012), 60.

27. Peter J. Haas, *Morality after Auschwitz: The Radical Challenge of the Nazi Ethic* (Philadelphia: Fortress Press, 1992).

28. It should be noted that the author is doing this purely as a thought experiment for the purposes of developing this argument. **Courage.** A force of approximately 800 fighters from Islamic State (IS) attacked an Iraqi force of 30,000 soldiers (trained and equipped by the US). As for moral courage, fighters from IS have continued to go on the attack despite facing an air campaign by elements from the most sophisticated air forces in the world. **Discipline.** The fighters of IS have demonstrated that they are a disciplined military force which has achieved operational success against superior numbers. The brutal murder of captured combatants and civilians has been both deliberate and calculated, designed to communicate a very specific and chilling message to their enemies. Although this displayed a wanton disregard for human life, it was a deliberate act. **Loyalty.** IS fighters have demonstrated their fervent loyalty to their cause. **Selfless Commitment.** IS fighters are fanatical to the point of death. **Integrity.** The word integrity refers to both the quality of being honest and having strong moral principles and the state of being whole and undivided. IS has been exceptionally candid and honest regarding their stated aims for the restoration of the Caliphate of early Islam. In this regard, “it is out to conquer, not merely to annihilate.” Although repulsive to the overwhelmingly vast majority of non IS supporters, Islamic State is being consistent with its religiously motivated principles. IS has a clear strategic goal towards the achievement of which its adherents have shown remarkable integrity. **Respect for Others.** Of the six core values of the British Army, respect for others is the one specific concept

for which IS has no parallel. IS has demonstrated hatred and contempt for others who fail to embrace their extreme ideology. It could be argued, however, that intellectual defenders of IS might maintain that IS values encompass respect for others – but only if the “others” accept the versions of Islamic law and society espoused by IS.

29. Ulrich Beck, *World Risk Society* (Cambridge: Polity, 1999) prefers to use the term late-modernity rather than post-modern. Deakin, “Ethics and the British Army’s Values and Standards,” 40, makes the same point.

30. Cristopher Nash, *The Unravelling of the Postmodern Mind* (Edinburgh: Edinburgh University Press, 2001), 77.

31. Nash, *Postmodern Mind*, 97, 77.

32. Stephen Pattison, *Pastoral care and Liberation Theology* (London, SPCK, 1997), 34.

33. Gene Edward Veith Jr., *Guide to Contemporary Culture* (Leicester: Crossway, 1994), 51. For a detailed explanation of this, see KJ Gergen, *Realities and Relationships: Soundings in Social Construction* (Cambridge, Massachusetts, and London: Harvard University Press, 1994). Gergen is a constructionist and gives a comprehensive treatment of how meaning is and can be constructed by and within society.

34. Elaine Graham, *Transforming Practice: Pastoral Theology in an Age of Uncertainty* (London, Mowbray, 1996).

35. Veith, *Guide*, 54.

36. Patricia Waugh, *Postmodernism* (London, New York: Edward Arnold, 1992), 6; Nash, *Postmodern Mind*, 26-28.

37. *The Aitken Report*.

38. Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (London: Pimlico, 2001), 60.

39. Jim Frederick, *Black Hearts: One Platoon’s Descent into Madness in Iraq’s Triangle of Death* (London: Pan, 2011) is a powerful examination of this.

40. Philip Zimbardo, *The Lucifer Effect: How Good People Turn Evil* (London: Random House 2007).

41. Zimbardo, *The Lucifer Effect*, 212.

42. This section is indebted to Charles Taylor’s philosophical observations contained in *Sources of The Self: The Making of Modern Identity* (Cambridge: Cambridge University Press, 1989); *Modern Social Imaginaries* (Durham and London: Duke University Press, 2004); Jack E. Hoban, *The Ethical Warrior: Values, Morals and Ethics* (Spring Lake: RGI, 2012;) and “Developing the Ethical Marine Warrior,” in the *Marine Corps Gazette* (June 2010), 20-25. His articulation of the “universal life value” in combination with the detailed arguments in Taylor’s *Sources of The Self*, offer what this author believes to be an important insight to how values can be grounded in an ethical good.

43. Taylor, *Modern Social Imaginaries*, 23.

44. Taylor, *Modern Social Imaginaries*, 2.

45. Taylor, *Modern Social Imaginaries*, 29, 17.

46. Taylor, *Sources of The Self*, 10, refers to his work as an essay on retrieval. See also Nigel Biggar, *In Defense of War* (Oxford: Oxford University Press, 2013), 160.

47. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic, 2006). See also D. Rodin, *War & Self-Defense* (Oxford: Clarendon, 2002).

48. Taylor, *Sources of The Self*, 5, 6.

49. Man is used in its universal sense as a species, rather than to refer to male gender. See also Taylor, *Sources of The Self*, 11.

50. Larry Siedentop, *Inventing the Individual: The Origins of Western Liberalism* (London: Alan Lane, 2014), 7. Siedentop was appointed to the first post in intellectual history ever established in Britain. An Oxford academic, he is a Visiting Fellow at the Netherlands Institute for Advanced Study and Visiting Professor at the Complutense University in Madrid.
51. Taylor, *Social Imaginaries*, 11.
52. Siedentop, *Inventing the Individual*, 357, 35.
53. Siedentop, *Inventing the Individual*, 35.
54. Charles Taylor, *Modern Social Imaginaries* (Durham and London: Duke University Press, 2004), 11.
55. Alasdair MacIntyre, *After Virtue* (London: Duckworth, 1981).
56. MacIntyre, *After Virtue*, 160-161.
57. Siedentop, *Inventing the Individual*, 16.
58. Siedentop, *Inventing the Individual*, 213.
59. Siedentop, *Inventing the Individual*, 216.
60. Siedentop, *Inventing the Individual*, 219.
61. For an introduction into the life and work of Grotius see Jon Miller, "Hugo Grotius," Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), <http://plato.stanford.edu/archives/spr2014/entries/grotius/> (accessed 3 October 2014).
62. "Hugo Grotius," *The Stanford Encyclopedia of Philosophy*, 1. See also CA Stumpf, *The Gortian Theology of International Law: Hugo Grotius and the Moral Foundation of International Relations* (Berlin and New York: Walter de Gruyter, 2006).
63. See Mark Murphy, "The Natural Law Tradition in Ethics," Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2011 Edition), <http://plato.stanford.edu/archives/win2011/entries/natural-law-ethics/> (accessed 8 May 2014).
64. See Ralph McInerny and John O'Callaghan, "Saint Thomas Aquinas," Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), <http://plato.stanford.edu/archives/sum2014/entries/aquinas/> (accessed 6 May 2014).
65. Hugo Grotius, *On The Law of War and Peace*, "Prolegomena" (XI) (1625) translated from the original Latin *De Jure Belli ac Pacis*, ed. AC Campbell.
66. Grotius, *On The Law of War and Peace*, "Prolegomena" (X).
67. See chapter 2 of *On The Law of War and Peace*.
68. See Alex Tuckness, "Locke's Political Philosophy," Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), <http://plato.stanford.edu/archives/win2012/entries/locke-political/> (accessed 2 May 2014).
69. John Locke, *An Essay Concerning Human Understanding*, <http://www.earlymoderntexts.com/assets/pdfs/locke1690book1.pdf> (accessed 7 December 2015); John Locke, *Two Treatises of Government*, <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/locke/government.pdf> (accessed 7 December 2015).
70. See *An Essay on Human Understanding*, Book 1, Chapter 1 "No Innate Speculative Principles" and Book 1, Chapter 2, "No Innate Practical Principles."
71. See *An Essay on Human Understanding*, Book 2, chapters 1-5.
72. See William Uzgalis, "John Locke," Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), <http://plato.stanford.edu/archives/spr2014/entries/locke/> section 2.1 (accessed 4 May 2014).
73. See John Ferling, *Jefferson and Hamilton: The Rivalry That Forged a Nation* (New York and London: Bloomsbury, 2013). The *Declaration of Independence*, for example, is a classic articulation of Lockean political theory.

74. *A Strong Britain in an Age of Uncertainty: The National Security Strategy* (Oct 2010), available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61936/national-security-strategy.pdf (accessed 8 April 2013). In the 2009 Update the opening sentence states that “providing security for the nation, safeguarding our citizens and our way of life, remains, the most important responsibility of government.” See *The National Security Strategy of the United Kingdom: Update 2009*, available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/229001/7590.pdf (accessed 8 April 2013).

75. Thomas Hobbes, *Leviathan* (1651), 78. The book is available from <http://socserv2.socsci.mcmaster.ca/econ/ugcm/3ll3/hobbes/Leviathan.pdf> (accessed 9 October 2014).

76. Hobbes, *Leviathan*, 88.

77. Hobbes, *Leviathan*, 88.

78. Hobbes, *Leviathan*, 106.

79. Locke, *Two Treatises*, chapter 3 “On the State of War” para 19.

80. Locke, *Two Treatises*, chapter 8 “the beginning of political societies” para 95.

81. Locke, *Two Treatises*, chapter 8 “the beginning of political societies” para 95.

82. Locke, *Two Treatises*, chapter 7 “Of Political or Civil Society” para 87.

83. Taylor, *Sources of the Self*, 11. Inalienable means, cannot be sold, transferred or removed.

84. See Daniel T. Rodgers, “The Career of Republicanism” in *The Journal of American History* (1992) 79, no. 1, 11-38. In this article Rodgers discusses the claim that “Locke dominates political thought, as no thinker dominates the political thought of a nation,” 13.

85. George H. Smith, “Jeremy Bentham’s Attack on Natural Rights,” <http://www.libertarianism.org/publications/essays/excursions/jeremy-benthams-attack-natural-rights> (accessed 10 October 2014).

86. Taylor, *Modern Social Imaginaries*, 16.

87. Taylor, *Modern Social Imaginaries*, 17.

88. Jack Donnelly, *Universal Human Rights: In Theory and Practice* (Ithaca & London: Cornell University Press, 2013), 91.

89. Taylor, *Modern Social Imaginaries*, 12.

90. For reference see <http://www.americanrhetoric.com/speeches/mlkihavedream.htm> (accessed 9 July 2014).

91. E.V. Abbott, “Inalienable Rights and the Eighteenth Amendment” in the *Columbia Law Review*, (1920) Vol 20, No 2, 183-195.

92. Edmund Burke, *Reflections on the Revolution in France* (1790), 51. <http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/burke/revfrance.pdf> (accessed 9 July 2014).

93. Burke, *Reflections on the Revolution in France*, 51.

94. Burke, *Reflections on the Revolution in France*, 31.

95. The full title of this work is *Anarchical Fallacies; being an examination of the Declaration of Rights issued during the French Revolution*. It is thought that it was originally written in 1796 but remained unpublished until 1816 when it was published in French, in Geneva. It only became available in English two years after Bentham’s death in 1834. For details, see HA Bedau, “‘Anarchical Fallacies:’ Bentham’s Attack on Human Rights,” in *Human Rights Quarterly* (2000) 22, no. 1, 261-279.

96. Bentham, *Anarchical Fallacies*, 540.

97. Bentham, *Anarchical Fallacies*, 30.

98. Bentham, *Anarchical Fallacies*, 199-200.

99. MacIntyre, *After Virtue*, 69.

100. Bentham, *Anarchical Fallacies*, 170.

101. Bentham, *Anarchical Fallacies*, 180.

102. See “Human Rights,” *Encyclopedia Britannica*. <http://www.britannica.com/EBchecked/topic/275840/human-rights/219322/Nonsense-upon-stilts-the-critics-of-natural-rights> (accessed 3 October 2014).

103. Donnelly, *Universal Human Rights*, 19.

104. Ferling, *Jefferson and Hamilton*, 45-46.

105. Iris Murdoch, *The Sovereignty of Good* (New York and London: Routledge, 1970), 78.

106. See Lawrence Pasternack and Philip Rossi, “Kant’s Philosophy of Religion,” Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), <http://plato.stanford.edu/archives/fall2014/entries/kant-religion/> (accessed 15 October 2014).

107. Pasternack and Rossi, “Kant’s Philosophy of Religion,” section 3.3.

108. Agnosticism is the view that the truth values of certain claims – especially claims about the existence or non-existence of God, as well as other religious and metaphysical claims – are unknown or unknowable.

109. “The fate of our times is characterized by rationalization and intellectualization, and, above all, by the “disenchantment of the world.” Precisely the ultimate and most sublime values have retreated from public life either into the transcendental realm of mystic life or into the brotherliness of direct and personal human relations” Max Weber, “science as a Vocation” (1918-1919) taken *From Max Weber: Essays in Sociology*, translated and ed. By HH Gerth and C Wright Mills (New York: Oxford University Press, 1946), 155. MH MacKinnon, “Max Weber’s Disenchantment: Lineages of Kant and Channing,” in *JCS*, Vol.1, no 3 (2001) 329-351, argues that Weber’s concept of disenchantment was as a result of his view that Kant’s reason had failed to deliver the “progress” or rational-ascetic that Kant predicted.

110. Weber, “Science as a Vocation,” 139.

111. Nietzsche first articulates this idea in *The Gay Science*, book 3 section 108 before expounding it in *Thus Spoke Zarathustra*, book 1.

112. For a biting critique of Kantian rationalism see Friedrich Nietzsche, *Beyond Good and Evil*, trans RJ Hollingdale (London: Penguin, 1973) section 16, 45-46.

113. For a useful and succinct introduction into Nietzsche’s understanding of nihilism, see K.A. Pearson, *Nietzsche* (London: Granta, 2005), Chapter 9 “Nihilism and the Will to Nothingness,” 94-104.

114. This resides under the rubric of metaethics. For an introduction in the subject, see Sayre-McCord, Geoff, “Metaethics,” Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), <http://plato.stanford.edu/archives/sum2014/entries/metaethics/> (accessed 17 October 2014).

115. Margaret MacDonald, “Natural Rights” in *Proceedings of the Aristotelian Society*, (1946-1947) 47, 231.

116. MacDonald, “Natural Rights,” 231.

117. MacDonald, “Natural Rights,” 244.

118. For a general introduction to this subject, see Creath, Richard, “Logical Empiricism,” Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition), <http://plato.stanford.edu/archives/spr2014/entries/logical-empiricism/> (accessed 17 October 2014).

119. Michael Thompson, *Philosophy* (London: Hodder, 1995), 229.

120. Ludwig Wittgenstein, “Lecture on Ethics” in *Ethics*, ed. P Singer (Oxford: Oxford University Press, 1994), 147.

121. Alfred Jules Ayer, “Ethics for Logical Positivists,” in *Ethics*, ed. P Singer (Oxford: Oxford University Press, 1994), 147.

122. Ayer, “Ethics for Logical Positivists,” 147.

123. Thompson, *Philosophy*, 71.

- 124. Hoban, *The Ethical Warrior*, 50.
- 125. Hoban, *The Ethical Warrior*, 50.
- 126. Taylor, *Sources of the Self*, 9.
- 127. Donnelly, *Universal Human Rights*, 19.
- 128. Taylor, *Sources of the Self*, 15.
- 129. Tibor R. Machan, "A Reconsideration of Natural Rights Theory," in the *American Philosophical Quarterly*, (1982) 19, np. 1, 61.
- 130. Machan, "A Reconsideration of Natural Rights Theory," 69.
- 131. Taylor, *Sources of the Self*, 23.
- 132. *A Strong Britain in an Age of Uncertainty: The National Security Strategy* (October 2010), available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61936/national-security-strategy.pdf (accessed 8 April 2013).

Chapter 14

Multiple Ethical Loyalties in Guantanamo

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In December 2014 the US Senate Intelligence Committee released an unclassified summary of its top secret report on the CIA's use of enhanced interrogation techniques at the Guantanamo Bay detention facility and other "black sites."¹ The report raised several disturbing issues ranging from the prudential element of whether information obtained under such circumstances is valid, to the ethical responsibilities of those involved. For the most part, however, the report focused on the "dual ethical loyalties" of medical professionals who seemingly violated their Hippocratic/physicians oath to "do no harm" in order to facilitate the interrogation procedures. Yet while one must acknowledge that this notion of "dual loyalties" is particularly problematic for those with allegiances to more than one profession (such as the military medical corps), it is an incomplete explanation, and therefore has much wider implications.

Simply put, each person has their own unique set of ethical beliefs and accordingly, there are *multiple ethical loyalties* in play that are not simply a matter of duality and not limited to those within a certain specialty or profession. These beliefs form a person's unique "ethical world view," which in turn leads to multiple loyalties and sometimes, conflicts of conscience. Most importantly, the military often accepts as a given that these individual beliefs are reset to a common baseline when one enlists and are maintained throughout the standard career track.

This is a false assumption. The lessons from Guantanamo in this paper support the proposal that truly effective ethical education must place more emphasis on the individual level of analysis in order to achieve a viable ethical culture.

Dual Ethical Loyalties: An Incomplete Answer

Dual ethical loyalties is a term used to describe the duality of oaths experienced by members of two professions such as medical, legal, and religious staff personnel in the military.

Additionally, it is often cited when these allegiances come into conflict and one must prioritize between the two. These conflicts can also arise when medical professionals who are not in the military are nevertheless under contractual obligations to provide services to government agencies that are granted authority to command medical personnel. As Stephen Braun notes in the Senate intelligence committee report cited above, some medical personnel working for the CIA faced this notion of dual loyalties when they were ordered to actively engage in the facilitation of torture on multiple occasions:

From the early stages of the CIA's coercive interrogations of terror detainees, the agency's health professionals were intimately involved. Front-line medics and

psychologists monitored and advised on abusive tactics, even as they sometimes complained about the ethical dilemmas gnawing at them.²

According to the summary, several medical personnel objected at times to the interrogation techniques but were overruled by operational personnel. But as Braun notes, while “the internal clash between medical personnel’s interrogation duties and their oath to ‘first do no harm’ is repeated throughout the Senate report,” the authors concluded that the few instances cited suggest that objections were indeed “rare.”³

Given that there was a clear conflict between the physician’s oath (which clearly stipulates that health professionals will *not* use their knowledge “to violate human rights and civil liberties, even under threat”) and the operational orders, one can only assume that many of the medical professionals placed their priority on the latter.⁴ Yet interestingly, the report notes that some indeed struggled with reconciling the tension between these dual loyalties. Why? If one agrees that each profession’s rules, ethics, and standards are clear and promulgated via what Samuel Huntington describes as the hallmarks of a “profession,” then it logically follows that *all* medical personnel would have either obeyed the tasking or refused *en masse*.⁵ To answer this discrepancy, one must consider that each person, regardless of professional affiliation, is still an individual – and therefore the notion of “dual loyalties” is incomplete and better stated as “multiple loyalties” framed by unique ethical world views.

Ethical World Views: The Individual Level of Analysis

To examine the issue of multiple loyalties, one must consider the individual level of analysis.

This notion is loosely based on Kenneth Waltz’s framework for understanding complex international relations matters in which he argued that one must consider *the individual* within “the structure of the separate states and within the state system.”⁶ In this regard, one can see that a more complete answer to the notion of multiple ethical loyalties must delve into philosophy (and psychology, for which those professionals have much more to say) and acknowledge that each person has their own notion of “ethics” and their own ethical worldview. Simply put, each individual is influenced at an early age by parents, teachers, and mentors. That individual internalizes these influences and “bounces” them off the accepted norms of society while encountering conflicts to varying degrees, yet maintains a unique interpretation of “good” and “bad” as they see it. From this, they form an ethical “worldview.” If that individual later becomes a member of a “profession,” they must then reconcile this set of beliefs with what the profession demands of its members. Here, even more potential conflicts are introduced, such as how a person defines priorities between the personal and the professional. In sum however, each person holds this world view and must reconcile the priorities of the different (and sometimes competing) loyalties to family, faith, friends, and their profession.

At the highest level, the reconciliation of one’s personal moral worldview can be illustrated by the dichotomous spectrum of *absolutism* versus *relativism*. Beyond the “core values” of things such as honor, courage, and commitment that the military often assumes

are commonly understood terms, the content of one's ethics is underpinned by whether that person perceives things as black-and-white, or at the other extreme, as always context-dependent. The former would say, for example, that lying is inherently wrong and therefore should never be condoned. The latter would say it depends on factors such as why and under what circumstances. And while it is true that few people are one extreme or the other, they do prefer to operate toward one end or the other.

Absolutists have an overriding notion of right and wrong based on their belief that there is ultimately one set of rules and one universal truth.⁷ As such, their moral judgments are based on "the right thing to do" *as they see it*, regardless of the circumstances or consequences. Because they see the world in mostly black-and-white terms (at least morally and perhaps generally as well), the absolutist possesses a clear moral compass that minimizes or negates most ethical dilemmas; they do not need to waste time considering the nuances of whether something is right or wrong today, tomorrow, or for one person versus another. This paradigm allows them to be decisive and confident in moral decisions, as well as most decisions in general. However, absolutists are "rarely motivated to look beyond their own beliefs, [and in turn] feel little motivation to understand the worldviews of others."⁸ Their ethical view is a "one size fits all approach" that might even manifest in zero-tolerance when judging and dealing with others in the interpersonal realm.

At the other end of the spectrum, relativists believe truth and standards are contextually and culturally dependent. They reject the notion that one universal standard of truth and morals can be applied to any given situation, or to all people regardless of the circumstances, or without considering (and perhaps giving preference to) potential consequences. Accordingly, relativists have few universal ethical rules, preferring instead to consider such matters on a case-by-case basis. Therefore, they are often well-positioned to make the "best possible" moral decision among dilemmas that might seem irreconcilable to others. Additionally, this paradigm promotes moral tolerance and allows one to see the merits of different and diverse views. However, the "it depends" nature of extreme relativism can be a slippery slope in which moral judgments are merely rationalized away. Relatedly, relativism may simply be an excuse to avoid the tough personal assessment regarding what one believes and why they believe it – and therefore does little in helping one build an effective moral base from which to operate.⁹

At this point, one should stop and refocus on the connection between this philosophical discussion and the notion of multiple ethical loyalties. In sum, we must acknowledge that individuals have their own ethical world view that is reconciled via their preferred *modus operandi* thought process, which may be different but nonetheless valid. Some see it as an absolute, while others tend to weigh the context and a resulting "greater good" that is reflected in ethical frameworks such as utilitarianism. This is not to say that people can be stereotyped into one category or the other or that their preferences stay constant. Indeed, most people operate somewhere in between, and this can and does change throughout life. But in the end, one must remember that the individual level of analysis is much more complex than simply a matter of dual loyalties.

An Important Note on Ethical Violations Versus Dilemmas

When considering the individual level of analysis, most of the literature is focused on the ethical *violations* of leaders both within and outside the military rather than the tension between competing, valid ethical loyalties. For example, hypotheses such as “The Bathsheba syndrome” have been embraced by Navy leadership in particular to help explain the spate of commanding officer firings.¹⁰ But as Mark F. Light points out in his 2012 article “The Navy’s Moral Compass,” the inspector general’s 2003 report on Navy commander firings noted that in nearly every case in question, the commander knew the rules and violated them anyway.¹¹ These episodes constitute ethical failures, and as such, are *not* what we are considering in this issue of multiple ethical loyalties within the individual level of analysis.

Instead, one should focus on true ethical dilemmas in order to understand multiple ethical loyalties. These issues are what Rushworth Kidder describes as “the really *tough* ethical choices” because they pit one right against another.¹² As an overarching framework, Kidder examines four ethical and dichotomous dilemmas that can lead to competing, multiple loyalties: *truth* versus *loyalty*, *individual* versus *community*, *short-term* versus *long-term*, and *justice* versus *mercy*. Throughout the examples, Kidder demonstrates that true dilemmas involve choices between one competing good versus another, and holistically, this is a much more accurate reflection of competing and valid ethical loyalties.

Evidence of Multiple Loyalties in Guantanamo

This notion of multiple loyalties is further evidenced in the case of the first Joint Task Force Guantanamo surgeon in charge of medical care for detainees, Captain Al Shimkus, who was placed in an ethical dilemma regarding his responsibility as a physician and his oath as a military officer. Interestingly, his concerns were not universally shared even among the medical personnel, suggesting that the individual level of analysis played a role. As he recently reflected:

When I was assigned to Guantanamo in January 2002, just as the facility opened, we faced the unfamiliar task of running medical operations to serve foreign detainees. We made mistakes, especially in failing to look into abuse of detainees. But even with the Bush Administration’s designation for these detainees as “enemy combatants” not entitled to protections under the Geneva Conventions, I determined that our medical responsibility was to provide the best quality care based upon the high ethical standards of the health professions. Our staff tried to adhere to that duty during my 19 months there. Soon after the facility opened, detainees initiated protests and a hunger strike over the claimed mishandling of the Qur’an. The JTF commander at the time acknowledged the protest quickly and resolved it with an apology. But in late February 2002, a more serious challenge emerged as almost 200 detainees began a hunger strike, again based upon claims of lack of respect for their religion. We dealt with a few of the more stalwart hunger strikers by removing them from the general population. Once removed from other detainees, these hunger strikers willingly accepted oral and intravenous sustenance and

rehydration in some form. We did not force-feed, although two detainees accepted nutrition through naso-gastric tubes. It was my assessment that the hunger strikers did not wish to die but to simply protest, as demonstrated by the detainees' willingness to accept sustenance voluntarily once removed from their fellow detainees. I also felt it important that clinicians maintain their ethical stance in responding to detainees' needs and choices. After I left, I heard reports that the detainees were increasingly in despair about their indefinite detention and the harsh interrogation practices to which they were subjected, which led to further hunger strikes. But commanders grew ever more intolerant of the protests. By 2005, while DoD claimed force feeding was needed to save lives, commanders openly portrayed hunger strikes as acts of asymmetrical warfare that must be stopped with force. That year, 5-point restraint chairs were introduced to make force feeding painful and humiliating. Medical judgments about whether the detainee was competent and acting voluntarily, and negotiations over means of taking nutrients, were replaced by a uniform policy of force feeding detainees who refused a certain number of meals. Thereafter, forced cell extractions for force-feeding introduced violence into the process. In 2013, the Department of Defense issued a protocol that even rescinded prior practices that had allowed detainees to reduce some of the discomfort of naso-gastric feeding. I never thought twelve years could go by without resolution of the detainees' status and fate, and I can understand why they have become even more desperate about their future. In these circumstances, the clinicians' job is even more difficult in having to address more complex mental and physical health needs and to respond to what have become chronic hunger strikes. But the duty of clinicians to remain devoted to the patient remains the same, and in the case of hunger strikes, that means determining whether the detainee is competent and un-coerced, and if so counseling him about his options. Domestic and international medical and nursing ethics preclude force-feeding, which are followed in other countries facing terrorism, including Israel and the United Kingdom. The medical staff should not compromise these ethical principles and become adjuncts to decisions issued by non-medical commanders to break the will of the protesters. But at Guantanamo, medical staffs continue to be caught up in policies that use them to break protests and breach their ethical obligations.

As further evidence that this is a matter of the individual level of analysis rather than simply an issue of dual loyalties of military medical personnel, Major General Michael Lehnert, USMC, lamented in a 2009 *Los Angeles Times* article that the Guantanamo Bay detention facility (GTMO) has had a negative impact on US values and our world standing.¹³ In January 2002, then-Brigadier General Lehnert was selected to command Joint Task Force 160 and establish the detention facility for detainees captured in Afghanistan. He arrived on scene and worked with Captain Shimkus. According to reports, General Lehnert was initially given "few direct orders on how to handle prisoners who were not members of a foreign military force but were nevertheless suspected of crimes against the US."¹⁴ This lack of guidance caused much confusion but also gave Lehnert the maneuvering room to establish the policy for the detainees – and he was determined to follow the

spirit of the Geneva Convention regarding humane treatment. He states, “Once they were out of the fight, I felt we had a moral responsibility to care for them in a humane fashion. I think it’s extremely important how we treat prisoners.”¹⁵ However, Lehnert was replaced 90 days later by a US Army general with a different view of the situation; one who had received guidance from US officials that led to “enhanced interrogation techniques,” forced feeding of detainees on hunger strikes, abuses of Muslim religious documents, and other practices that have been widely condemned by the international community as forms of torture.¹⁶

Conclusion: Why This Matters and Brief Recommendations

At the most basic level of health care professionals, John Williams’ article “Dual Loyalties: How to Resolve Ethical Conflict” seems to make it easy.¹⁷ He suggests that in order to prevent and manage dual loyalty conflicts, one should note that

Some of them are easy to resolve: those in which the patient clearly must come first, e.g., when authorities request participation in torture or other serious violations of human rights; and those in which the other party must prevail, e.g., mandatory reporting of certain infectious diseases or suspected child abuse.¹⁸

He then acknowledges that “in between, there is a large grey area that requires ethical decision-making and behavior” while citing the importance of individual judgment.¹⁹

That individual judgment and grey area constitutes the notion of multiple ethical loyalties and the individual level of analysis. As the case of Guantanamo illustrates, there are much broader questions regarding what and to whom one owes allegiance beyond simply the notion of dual loyalties. Most importantly, it is clear that the individual level of analysis is quite complex, and therefore cannot be mandated through any training or codified set of rules. It is based on each individual’s interpretation of the ethical guidelines presented to them and framed within their own “worldview.” It is not enough for direction from above to say that one is necessarily right or wrong in all circumstances. In the final interpretation, each person must continually reflect on the key elements of personal and professional ethics and consider the following questions: What *should* I do; What *can* I do; What *will* I do; and What will I *not* do.²⁰ Notice that only the last has a negative. This guardrail or “red line” must be established – even if hypothetically – well before one is faced with the events of the moment and potentially overcome by them.

Notes

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Chapter 15

Competing for Relevance: The Army Ethic in an Age of Moral Diversity

COL Brian M. Michelson

“What’s wrong with my values and why do you think I need news ones? What makes the Army Values any more relevant or valid than mine? What right do you have to impose your values on me? Isn’t the Army supposed to be a reflection of society?”

These are a fair series of questions and ones that can be legitimately asked by any of the thousands of young men and women seeking to enter the United States Army. To date, the Army does not appear to have fully examined the natural friction points between changing societal norms and the Army’s approach to its values, its ethic, and character development.

This paper will examine the growing gaps between changing societal values and the Army’s espoused values, as embodied in the draft Army ethic. The paper will also identify the risks these gaps cause to the Army profession and go on to offer suggestions regarding some of the difficult choices the Army must make to address these issues.

Moral Diversity: Losing a Common Reference Point

The most common techniques used to call for fire are adjusting from a known reference point, polar plotting, or using grid coordinates. But what would happen if a call for fire came into a Fire Direction Center (FDC) using coordinates created by the forward observer (FO) from an individually hand drawn map with its own unique coordinate system? What if every call for fire arrived at the FDC using a different system, each of which was individually devised by each FO?

Unfortunately, this analogy describes a trend in American society that increasingly embraces a post-modern worldview. While actual definitions vary, a worldview is generally described as “a particular philosophy of life or conception of the world.”¹ Worldviews matter because they provide a mental and emotional framework by which individuals interpret the world and the events that they experience. For instance, a person’s worldview shapes whether or not an individual is inclined to accept moral absolutes, or believe that ethics are relative; whether religious truths are valid, and if so, which ones; and whether the existence of the universe is due to random chance or divine origin. These and other elements have an impact on how an individual will interact with other people and what they perceive as acceptable behavior.

“Post-modernism” is a worldview increasingly accepted in the United States. While definitions vary among sources, the postmodern worldview generally accepts that objective truth does not exist, that ethics are relative within the context of each culture, and that religious truths are entirely a matter of personal preference.² This relativistic viewpoint has gained increasing acceptance while one of its natural counter-balances, religious thought, has been decreasing among Millennials, who are significantly less religious than previous generations, even accounting for where they are in their life cycle.³ In a *New York Times* Op-Ed, David Brooks writes that “In many parts of America there are no basic codes and

rules woven into daily life, which people can absorb unconsciously and follow automatically.”⁴

While hotly debated, our educational process, primarily the Common Core approach to facts and opinions, renders moral judgments to be mere opinions and appears to reinforce a relativistic viewpoint.⁵ Individuals who enter the Army carry, on average, 18-22 years of societal norming and are potentially already primed at that part of their lives to be moral relativists.⁶

Due to these and other societal phenomenon, some of the traditional moral anchors of American society have begun to lose significance and are being replaced with non-judgmental relativism, or effectively the null set. The result is that American society has an increasingly diverse view of what constitutes a moral baseline. This viewpoint will increasingly collide with a fairly rigid military moral code that is backed up by law, the Uniform Code of Military Justice and numerous regulations.

We are already seeing this tension play out in the force. Upon entrance into the military, much is suddenly expected of individuals and many are simply not prepared to meet these demands. The Army’s internal research indicates that in 2011, Soldiers committed over 78,000 criminal offenses, approximately two thirds of which were committed by E1-E4s, those most likely in the 18-22 year old demographic.⁷ Analysis of the same data also indicates that approximately a full third of the documented criminal conduct from the same year was committed by non-commissioned officers, warrant officers and commissioned officers. Note also that these statistics do not even address non-judicial punishment, but it is logical to assume the same trend would be reflected in that category of misconduct as well.

If we want ensure that that all individuals, to include those with morally diverse backgrounds, who enter the Army move past simple rule following and embrace the Army ethic, we must examine how we approach character development.

A Bridge to Nowhere

Many of the young men and women who enter the Army are still forming their adult personal identities and moral character. The Army can have especially significant influence with these individuals and even doctrinally addresses the need for character development. However, in framing its approach to character development, the Army makes the fundamental assumption that Soldiers and leaders inherently know what is right and want to live ethically.⁸ This assumption, along with several other questionable ones, has led the Army to accept a *laissez-faire* approach to character development that is clearly inadequate to the challenges the Army now faces.⁹ This approach will not help empower the type of moral courage we desire in our future leaders.

Risk to the Army

The risk to the Army falls in two categories. Perhaps the greatest risk is that with the professional ethic, even when published, may not compete well in the hearts and minds of the Army. It may not be universally embraced by Soldiers who find it either culturally out of step with their morally diverse personal views, or simply another list of rules and ideas

that brief well, but lack sufficient depth to apply to on the ground situations. The second risk is that the Army will not operationalize the concept of “character over competence” at an institutional level and simply continue with previous methods of instruction and development in the hope that because the Army ethic makes sense to Generation X and senior leaders, that it will make equal sense to Millennials. The Army ethic is too important to the Army as an institution to gamble its acceptance by the next generation on “the same ‘ol same ‘ol” approach.

A Way Ahead

This paper began by looking at the increasing moral diversity in American society and some of the clear risks this dynamic will increasingly pose to the Army. While the risks are significant, the Army has addressed previous challenges and, with courageous leadership, can address this one also. The following recommendations, while certainly not all inclusive, could assist the Army in competing as an institution in the marketplace of ideas.

Clearly Make Ethics and Morality Leader Business. Leaders are the stewards of the profession. While chaplains, staff judge advocates, academics and others have an important role in the discussion of ethics, the Army appears to have intellectually outsourced its thinking and advocacy on these issues to technical experts vice practitioners (commanders). Current professional military education (PME) offers little if any discussion on the complex issues involved in ethics and morality. While “character over competence” expresses a strong sentiment, if the Army does not apply resources to it in terms of training and education it will remain another unfunded mandate that competes with numerous other ones for the scraps of unit time after other priorities are met. This is not to suggest that the answer lies in yet another program directed by the Department of the Army, but a real and substantive investment in the curriculum at the Army’s PME schools where our rising leaders are trained and educated.

Develop a Logic, Process and Language for Ethical Decision Making. The Army ethic, when published, will be a good step forward, but explaining the complex issues involved in its application will fall on leaders if it is to be embraced by the force. However, the Army currently lacks a coherent logic, process and language for rationally working through, and resolving, ethical dilemmas. Simply asking “is it legal?” only scratches the surface of what can be very complex issues. Without this accepted framework and commonly defined terms, we will struggle to have even an effective dialogue as the Army ethic competes with different moral reference points. This is especially true when dealing with the foreign cultures Soldiers will interact with while deployed. Not all frameworks are equally good, but some are better than others and if we are able to establish a baseline, we will at least have a common point of departure for effective discussions.

Rethink Our Approach to Character Development. As previously discussed, the Army’s current approach to character development is inadequate in achieving the Army’s desired goals and needs an immediate re-examination. We can, and must, do better than a *laissez-faire* approach if we are to operationalize the concept of “character over competence.”

While the challenges are serious, there is good news. The Army is a highly respected organization that has an opportunity to shape a generation of Millennials who are open to change.¹⁰ If we as an Army accept the premise that we must compete in the marketplace of ideas, we are more than capable of competing well and adapting to changing societal conditions. However, as General Shinseki has aptly stated, if we don't like change, we will like irrelevance even less.

Notes

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Chapter 16

Ethical Considerations in Humanitarian Efforts

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The Role of Just War Theory in the Military

There are subtle differences between just war tradition and just war theory. While one could argue that just war theory is nested in just war tradition, in present day both terms are used interchangeably. Just war tradition are those historical bodies of rules and agreements that apply to war, such as the Geneva and Hague conventions. Just war tradition applies between enemies with similar cultures and where a moral identity exists.¹ For those cultures who vary greatly in religious beliefs or in how society values life, the tradition rarely applies. Just war tradition dates back to the earliest records of warfare and is founded on the consideration of honor.

Just war theory dates back to the Indian epic, the Mahabharata; the theory is defined as a military ethic and doctrine.² The theory also postulates that while war is an extreme measure of effort, it may not be the worst option. Doctrine serves to support the assertion that war is morally justifiable based on a set of defined criteria. These criteria include proper authority, just cause, right intention, and proportionality.³ The principles that provide the moral framework for just war include the rules that govern the justice and morality of war (*jus ad bellum*), the conduct of war (*jus in bello*) which falls under the principles of discrimination and proportionality; as well as who is responsible and accountable after war (*jus post bellum*).

Current just war theory transcends its roots in religious studies by officially entering the domains of international law and political theory.⁴ Present day Western concepts of ethics now join forces with just war theory, for example, by allowing students at the United States Army Command and General Staff College (CGSC) to apply the principles of *jus ad bellum*, *jus in bello*, and *jus post bellum* to research during military studies. Using anticipated leadership applications, students view theory through the lens of individual and societal ethical beliefs and values. Individual analysis allows the Soldier time to reflect on the important elements of decision making and leadership as they apply current and emerging concepts unique to the nature of the military profession. It is the process of critical reflection and thinking that allows each student attending CGSC as well as all Soldiers to sort through individual and organizational competing interests and to challenge long-held assumptions in support of a military environment that strives to grow as a learning organization.

The author of this article does not elaborate further on the factors of criteria, principles, legitimacy, current relevance, or religious aspects of just war tradition/theory; these factors deserve individual analysis.⁵ However, just war theory provides a theoretical framework for this paper.⁶ The point of this work is to present a framework for the consideration of individual and societal ethics and values during humanitarian intervention as a way to not

only support the laws, rules, and spirit of intervention but to facilitate change if and when it is needed.⁷ A summary of international humanitarian law establishes the foundation for ethical considerations of humanitarian efforts.

International Humanitarian Law and Intervention

International humanitarian law is often divided according to Geneva and Hague law. Geneva law includes the four Geneva Conventions of 1949 and concerns the treatment of victims of war. It does not concern the conduct of hostilities.⁸ The first two conventions center on the treatment of the sick and wounded members of the armed forces. Convention III addresses the treatment of prisoners of war. Convention IV covers the categories of I, II, and III and includes Article 3 which defines minimum treatment standards for all persons not active in hostilities. The Geneva Conventions do not impose obligations upon humanitarian agencies. They do however, clarify when and under what conditions states must allow assistance to be delivered.⁹

Unlike Geneva law, Hague law governs the conduct of hostilities. The law, a codified series of treaties and declarations, was developed following the first Hague Peace Conference in 1899. A few of the most important principles of the law include a limit on the right of belligerents to create a means of injuring the enemy and the prohibition of weapons used to cause unnecessary suffering or injury. Additionally, the law highlights the difference between civilians and military actors.¹⁰

Similar to the principles that guide just war theory, the defined principles of humanity, independence, impartiality, and neutrality guide humanitarian efforts. Humanity, entrenched in the philosophy of altruistic charity, is considered the most essential of the principles.¹¹ Humanity addresses the protection of life and health as well as respect for human beings. The latter three are also known as the humanitarian imperative. Independence refers to the operational function of humanitarian work where action is autonomous from political, military, and economic objectives. Impartiality addresses the need to deliver humanitarian action based on need alone. Last, neutrality refers to humanitarian actors who must remain neutral during humanitarian intervention by not taking sides in hostilities or by engaging in controversies of a religious, political, or ideological nature.

Based on the accepted precepts of just war theory and humanitarian law, the author of this paper posits that humanitarian intervention should not be legitimized by just war theory. The manipulation of humanitarian assistance efforts run counter to established principles governing international humanitarian laws – those of humanity, independence, impartiality, and neutrality.¹² Furthermore, in order for each phase of a conflict to qualify for just war criteria, each phase must individually satisfy all just war criteria.¹³ Nilsson argues if the primary principle of humanitarian effort is to address human suffering and to protect the dignity and rights of the victims, then humanitarian agencies, and not military entities, should be responsible for fulfilling the humanitarian requirement of those in need.¹⁴ The use of humanitarian interventions is highlighted using the current example of Afghanistan.

US War in Afghanistan

The United States formally declared war on terror after the 9/11 terrorist attacks.¹⁵ The initial aim of Operation Enduring Freedom was to seize control of the state and oust the Taliban government. Once control was established, US forces focused on gaining full control of territories. By 2008 the conventional approach to war was challenged by emerging counterinsurgency (COIN) doctrine. The civilian population became the center of gravity and military missions shifted from eliminating the enemy to alienating the enemy from the local population with an objective of consolidating captured areas and building local trust. With a wider operational scope, knowledge of the culture, customs, and environment was suddenly an imperative. From an ethical dimension, war was legitimized by just war theory – it was just and necessary – a defense of national security and dignity. However, the introduction of COIN doctrine changed the ethical dimension.¹⁶ No longer was the enemy a fixed entity evil in all ways beyond ethical redemption. COIN tempered the approach to military operations by prescribing sensitive ways to win over the population; however, COIN also blurred the definition of enemy.

Ten years of international intervention in Afghanistan have not been successful in part because Western foreign policy goals drive humanitarian efforts in Afghanistan; humanitarian efforts are secondary to policy goals when conflict arises between the two. Despite millions of dollars in aid, the situation is characterized by corruption, surging violence and limited economic progress.¹⁷ It is a country where security remains a prime concern and where peacekeeping and other interventions operate in parallel. Those engaged in Afghanistan, organization's and nations, tend to disagree on the problems that currently exist. Some see a humanitarian crisis, some see a state with a need for strengthened capacity, while others see a war on terror.¹⁸

For a brief moment, the author of this work explores the application of discourse analysis to the Afghanistan scenario – focusing specifically on identities of select actors. Discourse analysis is an analytical tool – a way of framing parts of the social world in order to examine it. It constitutes a way of thinking, a set of traditions, and that which defines and restrict the scope of political action. Discourse analysis allows for questions that challenge the foundations of political practice by analyzing why thought processes and actions have become normalized as well as by highlighting internal tensions.¹⁹

Identity and Three Discourses in Afghanistan

Western identities comprise three discourses all of which express a need to be in Afghanistan; the military discourse, the humanitarian discourse, and the state-building discourse. These Western identities are known as the intervening self; Afghanistan constitutes something outside of the self, known as the other. The need for any intervention should not be based on the self or other in isolation rather the need analysis should focus on the relationship of the self-other. All three discourses are worthy of discussion, however, humanitarian discourse is the focus of continued analysis.²⁰

Traditionally, humanitarian actors operate in small organizations, have a strong humanitarian ideology when addressing human suffering and needs, have limited

resources, and usually live close to those they support. Until the 1990s, humanitarian actors operated independently of political and military actors. However, in 1990 the scope and applicability of work grew significantly as humanitarian work became more politically oriented. Within the framework of humanitarian work after 1990, discourse now included nongovernmental agencies, governmental agencies, and intergovernmental agencies, all of which have their own idea of how to define the “other.” From an ethical dimension, the politicization of humanitarian intervention is a problem for the classical humanitarian for two reasons. First, international humanitarian law is a key reference point in discourse; second, the tenants and spirit of the human imperative is divided between humanitarian workers and others – such as those involved in security or reconstruction. Ethical identity is founded on respect and the recognition of neutrality.²¹ Afghanistan is a perfect example of the diminishing consensus of what defines humanitarian intervention as seen by the killing of humanitarian workers. It is the weakest of the state that suffers the most from this political ideology.²² Furthermore, when military forces are introduced to humanitarian efforts with the objective to win the hearts and minds of the people, neutrality is severely undermined.²³

Cross-cultural Interventions

One way for the military to strengthen the use of any intervention (humanitarian included) is to apply scientific evaluation. Organizational development (OD) interventions and theory apply to many actors from organizations to third world settings however, only with sufficient incorporation of cultural awareness during operations. Afghanistan is an excellent example of why the US requires a precise evaluation of cultural awareness. Afghanistan is a traditional society grounded in ancient tribal and religious practices. It is a challenge for the US to permanently affect change in Afghanistan without a deep understanding of what is necessary to support an Afghanistan intervention.²⁴ The US can build infrastructure, provide equipment, provide arms, as well as millions of dollars in support however, if change initiatives do not have the support of the local populations, change will be only temporary. Change begins with a modification to the values and norms of an individual, unit, organization, or country. For Afghanistan, intervention requires a bottom-up approach in order to identify what is acceptable and what is not.

The first step in the OD process is to highlight the importance of culture as a critical factor in any context. A cultural awareness for the practitioner or “self” (such as the US) is the ability to recognize cultural biases and ethnocentrism. The military does, to some degree practice selected steps in the OD process, (such as identification of the problem, identification of applied techniques, evaluation of the process and identification of cultural values and norms that are part of the process), however, a multicultural scenario is complex and failure to capture assumptions weakens the outcome of any intervention. There are four assumptions during an intervention process that hamper the success of a cross cultural effort. First, the unity of practice assumption occurs when the same techniques for an intervention are applied without meticulous analysis of the cultural context. Second, the inherent values assumption occurs when the individual, organization, or state assumes that the cultural values are the same for all participants. Third, the unity of values assumption

occurs when all intervention techniques are based on the same cultural values. Fourth, the universal values assumption occurs when interventions are considered applicable regardless of the situation or context.²⁵ Without clear and defined analysis, casuistry is flawed. Humanitarian intervention considerations require analysis beyond invoking a principle based on rights or utility.²⁶

Conclusion

At no point in this paper does the author question the validity of humanitarian law or the need for humanitarian intervention. These decisions are legal and political in nature, respectively. Be that as it may, as an army of the global protection force it is our duty to support military and political decisions through continued analysis and application of academic rigor.²⁷ Williamson argues that an indefinite future of military conflict will prevail from extremist groups who will continue to foment instability for the United States and its allies.²⁸ The landscape and rules of war as we know it, are changing. Additionally, defense budget cuts further compound the need to streamline and retrench strategic capabilities. Applying lessons learned from Afghanistan, the United States is beginning to recognize that less military involvement and more local civilian involvement is needed to counter insurgents. By utilizing more indirect interventions built on partnerships with local and civil leaders, the United States military frees extended resources left behind from conflict to focus on the traditional role of neutralizing the enemy. In turn, true humanitarian efforts become neutral, independent, and freed from their role in military strategy.²⁹ The author of this paper contends valuable resources, such as industrial-organizational psychologists, humanitarian work psychologists, applied research scientists, and information operations specialists readily exist within the military community. These resources can add valuable insights into applied theory, models, and methods used to manage humanitarian themes by empowering quantitative methodologies and empirical evidence.³⁰ For example, though the discussion presented in this paper argues against the use of humanitarian interventions as a way of achieving political, economic and security objectives, a recent study shows a positive relationship between the constructs of humanitarian ends and military means.³¹ Friis argues for a separation of effort between military intervention and humanitarian efforts.³² Sen posits that it may be possible under limited conditions to achieve humanitarian ends by military means.³³ These arguments provide valuable perspectives for consideration; the noted research is rich in academic rigor and conclusions that could add immense value to military strategy.

Implications for Future Research

There is an urgent need to reevaluate the concept of humanitarian intervention as it applies to significant changes in how the US military approaches contemporary conflict.³⁴ The argument for humanitarian intervention is not clearly stated.³⁵ As the new generation of future senior leaders from the Command and General Staff College navigate the ambiguities of military interventions of all types, they should do so with a perspective that a threat is no longer confined to a need for a large military presence on the ground. Revolutionary technologies such as robotics, drones, cyber, and the effective use of non-governmental organizations allow for a view of the battlefield without sending human assets into harm's

way.³⁶ As technology develops, the application of humanitarian efforts will also change.³⁷ We must build future strategy not on how we think the world works. We must build future strategy on how the world does work.³⁸ From a military perspective of intervention effort, it is necessary to integrate knowledge across fields of study aligning thought from philosophers, psychologists, practitioners, ethicists, specialists, and religious leaders in order to effectively apply resources as well as to invoke maximum impact of humanitarian efforts.³⁹ We can start our analysis by exploring the role of cross-cultural adjustments needed for change in humanitarian intervention strategies.⁴⁰

Notes

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Chapter 17

Preparing Soldiers of Character

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Any society which evaluates its members by their worth to itself is “not” attaching value to the individual person at all, but only to his functions. When these functions no longer serve a useful purpose, the man ceases to have any value. This was Nietzsche’s philosophy and Hitler’s.

- Arthur Custance¹

While most readers will identify with Friedrich Nietzsche’s utilitarian philosophy as a catalyst for Adolph Hitler’s “final solution,” few are aware of an American educator with similar views. The father of American modern educational system and functional psychologist John Dewey shared the view of most nineteenth century Utilitarian moralists. The philosophy of those who view man apart from God understandably will emphasize “skill and technology” which encourages doing rather than placing value on the individual. This viewpoint, alive and well in the American educational system today, focuses on the consequences of human actions at the expense of placing value on the individual.

The Army’s focus on technical and tactical competence at the expense of developing Soldiers of character is deeply ingrained into both our national and Army culture. This fundamental defect has its origin in two sources. First, Soldiers must accomplish the mission and more importantly, achieve their higher commander’s intent. An Army that cannot fire and maneuver, logistically sustain itself, out think through planning and decision-making, does not fulfil its central purpose for the nation. Coupled with this, the Army is the principle proponent for land operations. Land combat against an armed adversary is an intense, lethal human activity which involves complexity, chaos, fear, violence, fatigue, uncertainty and death in imposing the Nation’s will on an enemy by force.² Mission accomplishment and lethality of land operations are two fundamental considerations that motivate Army leaders at all levels to focus training, leader development and education predominantly on skills related to tactical and technical competence. A second and more subtle aspect of our Army’s emphasis on technical skills and tactical competence at the expense of placing value on the individual and character development has its roots in John Dewey’s “progressivism” inherited by our Soldiers from the American public and private education system. This pervasive and decidedly negative influence on the Army does not end with assessing of American youth at enlistment or commissioning. The generational influence associated with progressivism and John Dewey’s educational philosophy continues to have a profound influence upon our Soldiers, leaders and the Army. This educational philosophy was subtly introduced during the past century by a host of well-meaning humanists, none more influential than John Dewey, the topic of this monograph.

This unbalanced approach is a blind spot to most commanders and leaders. We see this line of reasoning emphasized with the central focus in training on what our Soldiers do

rather than who they are in terms of character and values. In the Army's Be-Know-Do leadership lexicon, this would be competencies, the behavior and activities of a Soldier or Army leader. The Army should shift focus in the direction of "who our Soldiers are," that is, the development of transformational leadership attributes such as character, values, presence and intellect. These are all aspects of the "be" attributes in the Leadership Requirements Model found in Army Doctrinal Publication (ADP) 6-22, *Army Leadership*. Importantly, as our leadership doctrine mandates, building teams through mutual trust is how commanders and leaders move Soldiers from compliance to commitment. Strong character and commitment are both founded on timeless principles of selfless service and the rest of the Army values. Developing character starts with an accurate understanding of one's personal and leader identity. Character is especially effective through activities with an emphasis on mutual trust such as our Army profession, Soldier for Life initiatives or in the long established creeds and oaths we find in the Army.

The challenge is that the Army's current approach to preparing Soldiers mentally and emotionally for combat is short sighted and should be expanded to include preparing Soldiers to be men and women of strong character. Religious or spiritual faith is among the most influential sources of personal values formation. This paper will show that the Judeo-Christian moral ethic established in the Bible, Jewish Old Testament and teachings of Jesus found in the New Testament, are the principle sources of values and character in the American culture, and thus the military and our Army.³ Developing character is best done by capitalizing on the moral values and principles found in the Judeo-Christian ethic. We should not aim for behavior compliance and rule following activities, rather Army leaders should strive to inculcate character and Army values into the being of our Soldiers through a commitment to the nation, the Army and their unit.

Importantly, this is done best in an environment which never proselytizes one's personal faith by advocating or advancing one's religious or personal agenda or abusing the power our senior leaders have over junior Soldiers. Admittedly, parental and family values also have a significant influence on individual character and while most individuals do not fall far from the tree, the family influence is beyond the scope of this essay because for Soldiers serving today, this is part of their past. Education also has a profound impact on character and values in the individual and will be addressed in detail in this paper. Teaching concepts of character, Army values, integrity and high moral standards is tough government work because it calls for "transformational" change and placing value on the individual. It's also tough in today's politically correct environment which in many aspects is increasingly hostile to any profession of faith, particularly the Christian viewpoint.⁴

All change is likely to find resistance; it takes time, costs money and resources and requires personal investment by leaders, especially commanders. Finally, in the case of developing Soldiers of high moral character, our American educational system, our colleges and universities and our Army training and school (institutional and operational) culture is overly focused on developing skills (what our Soldiers do) rather than finding value in who they are (Soldiers of character, integrity and honor). The technical and scientific focus on Soldiers is a blind spot in large part because of the educational philosophy engrained in our American culture. Finally, in addition to the mission accomplishment and education culture

the pressure to focus on skills is often done simply because it is easy to train and measure; yet it is the sure path of the easy wrong, as opposed to the hard right.

The Army Leadership Requirements Model (LRM) describes transactional leadership competencies such as leading others, building trust, creating a positive environment, getting results, preparing self and others, and communication skills as leadership competencies.⁵ There are in general a host of training, education, resources and the like to help develop these skills in our Soldiers. The Army's LRM also describes leadership "transformational" attributes such as character, presence and intellect. Character in the model includes concepts such as the Army values, empathy, the warrior ethos and discipline. There are very few meaningful training or educational resources provided by the Army to help leaders, especially commanders, achieve this important aspect of leader development.

This is really tough government work: the transformational change required for the institutional Army and operational commanders and leaders to build Soldiers of character, the inculcation of values, instilling moral standards and application of those values! Like all change, this hard government work takes a long time.

Background

To be perfectly intelligible, one must be inaccurate; to be perfectly accurate, one must be unintelligible. — Bertrand Russell⁶

"What is character?" is a question that lends itself to the demonstration that philosopher Bertrand Russell had it right when it comes to language. It's hard to define and character means something different to everyone. The Army defines the concept of character in doctrine as:

Leadership attributes are characteristics internal to a leader. Character, *a leadership attribute*, is the essence of who a person is, what a person believes, how a person acts. The internalization of Army Values is one type of character attribute. Empathy is identifying and understanding what others think, feel and believe. Leaders of character who embrace the Army leader attributes and competencies will be authentic, positive leaders. While *character* relates to the internal identity of the leader, *presence* attributes relate how others see the leader and *intellect* relates to what abilities and knowledge the leader possesses, or how a leader thinks and interacts with others.⁷

In the Leadership Requirements Model found below, character is a leadership attribute rather than a leadership competency. Doctrinally, character is comprised of Army values, empathy, the Warrior and Service Ethos as well as discipline. Character then in the vernacular of our Army doctrine has a threefold aspect: "what a person is, what a person believes and how a person acts."

The very terms in our doctrine such as "values, empathy and warrior ethos" imply moral principles which logically lends themselves to who a person is, rather than activities a person does. Standards are measurable goals that define how we behave or act. Standards are understood or codified by law or regulations. Standards, while a brilliant topic in their own right, are beyond the scope of this paper. Our Army values reflect American society

and are consistent with moral virtues and ethical principles that reinforce the nation. There are no universally agreed upon or published American values as a concept yet there are volumes written on the topic. Our American values are deeply rooted in the Judeo-Christian tradition and the Enlightenment thought. These values are codified and evident in the US Constitution, Bill of Rights, and especially the *Federalist Papers* and ideals of the nation's founders.⁸

One can always question the content or principles of general morality: What is moral in a particular case? Who decides what is moral? How universal are moral principles? These are fair questions and can be answered adequately by taking a good ethics course or reading several books on the issues. – Lieutenant General (Ret.) James M. Dubik⁹

In an otherwise brilliant paper, the sweeping generalization that taking an ethics course or reading some books about ethics can answer vital questions about what is moral and who decides what is moral, is shortsighted. It is a commonly held belief that is fundamentally wrong. The thesis of this paper contends that ethics and morality as part of character development is a lifelong pursuit and like in other life endeavors, the character journey is often more important than the destination. Questions such as “what is moral” or who decides what is moral are of fundamental importance. Consider if we say that drunkenness, abortion, homosexuality or murder is wrong and justice is right, why is it wrong or right? What makes an act right or wrong and what is the basis of morality? Or consider, “is morality simply an illusion, foisted on one group of people by another?”¹⁰ Thrasymachus, the late 5th Century BC Greek philosopher, argued that “all disputation about morality is empty, except in so far as it is reducible to a struggle for power.”¹¹ Morality questions are by no means easy and have puzzled the best and brightest philosophers and theologians since the dawn of human history.

The Judeo-Christian Tradition

Christianity is the largest of all religious groups and represents well over two billion people worldwide. Islam (1.5 billion), Hinduism (one billion) and Buddhism (500 million), along with folk religions in China, Asia and Africa represent about another one billion combined.¹² There are an estimated 38,000 different religious groups on the planet. The largest group, Christianity, possesses hundreds of different denominations, sects and groupings. Well over 97 percent of the people on earth are spiritual in the sense that they are not agnostic, nor professed atheists. Christianity remains the most predominant worldwide religious faith today and as it relates to this paper, note that 80 percent of the people in the United States are Christian.¹³ Since 1776 Christianity has continued as the most ubiquitous and leading faith in the United States. The current author makes no judgment as to the efficacy of the practice regarding the Christian faith in the United States. The Judeo-Christian ethic as it relates to character, morality and ethics in the United States is explored because the majority of the citizenry, thus the Army, profess to be Christian. For much of humanity, the concept of religion, spirituality or faith drives individual moral character. It is a fundamental part of any culture and while the United States is not a Christian theocracy, our nation is that of a secular government based on religious values. Artifacts of the Judeo-Christian

ethic are ubiquitous in American culture. For example, “in God we Trust” on currency, sculpture of Moses and the ten commandments depicted on the Supreme Court Building, “one nation, under God” as part of the pledge of allegiance are prominent artifacts. Since the middle ages, the abbreviations B.C. “Before Christ” and A.D. “anno Domini or the year of our Lord” have been pervasive in Western civilization. While a secular nation, the Judeo-Christian ethic had a profound impact on the founding fathers, the original national documents and the nation’s educational system. Arguably this influence has had a much more pronounced influence on American culture during the first 150 years of the nation, but clearly this influence extends to the present time.

The very word “Torah” in Hebrew is derived from the root “הָרָה”, which in the hif’il conjugation means to “guide or teach” rather than the commonly accepted transliteration accepted as the “law.”¹⁴ The Torah, or Pentateuch in the Greek and expanded Talmud Yerushalmi, governs all aspects of Jewish culture and civilization. It is fundamental to the concept of religious Judaic tradition and sets standards for health, hygiene, ethics, culture, law and civil government as well as personal moral and ethical behavior. It has governed all aspects of character for the Jewish race and nation. The early Jewish teaching, written and practiced for well over the past three millennia, predates Greek and Roman cultures. H.C. Leupold dates the early Jewish culture to the time of Hammurabi, first Dynasty of Babylon.¹⁵ The Pentateuch code was practiced by the Hebrews at a time when many early civilizations, i.e., Greek, Roman, and Mesopotamian, practiced decidedly immoral conduct such as infanticide and pederasty – immoral by the standards of Western civilization. The Judeo-Christian ethic was part of the fundamental beliefs of our founding fathers and pervasive in the nation’s early culture and educational institutions. Seven of the Ivy League schools were founded by Christian affiliation; only Cornell University, always strongly nonsectarian, was not. For example Harvard and Yale, the Calvinists; University of Pennsylvania, the Methodists; Princeton, Presbyterian; Columbia University, the Church of England and Brown University, Baptist. Most were originally seminaries with a denominational flavor and relics such as compulsory chapel which for many lasted well into the twentieth century.¹⁶ Seven of our nine current Supreme Court justices obtained either their undergraduate or law degrees from Ivy League schools. Dartmouth’s motto remains “a voice crying out in the wilderness” taken from Isaiah 40:3 and Princeton, “Under God’s power, she flourishes.” Harvard University motto is simply ‘Veritas,’ or Truth and even today, the University of Pennsylvania mascot remains “the Quakers.”

What the Judeo-Christian Ethic is Not

Two prominent yet often misunderstood aspects of the Christian ethic are vital to understanding the mindset and approach towards education, law and government by the founding fathers; the depravity of mankind and the messiahship of the Christ. First, the issue of depravity is a central aspect of the Judeo-Christian ethic and was of vital importance to the nation’s founding fathers. Depravity is the proclivity of men for moral corruption and wickedness. This depraved proclivity stands precisely opposite of what Soldiers should aspire to in terms of good character. In the Christian faith, the result of the fall was sin, death, and depravity for the human race. For many of the Soldiers who read this paper, there will

be no need to elaborate; many have witnessed first-hand plenty of moral corruption and evil behavior during combat actions. While the writings of many authors from the Age of Enlightenment such as HG Wells or Rousseau and more from recent times show mankind to be a noble and honorable creature, a more realistic approach would be found from self-professed agnostic Thomas H. Huxley:

It is the secret of the superiority of the best theological teachers to the majority of their opponents that they substantially recognize these realities. The doctrines of original sin, of the innate depravity of man appear to me to be vastly nearer the truth than the literal, popular illusions that babies are all born good, and that the example of a corrupt society is responsible for their failure to remain so, that it is given to everybody to reach the ethic ideal if he will only try and other optimistic figments.¹⁷

Power corrupts and leads dogmatically to abuses of that power. Lord John Acton's famous quote to Bishop Mandell Creighton in 1887, "Power tends to corrupt; absolute power corrupts absolutely" holds true today, perhaps more so. Just check out the latest internet videos about ISIS with beheading, hand chopping, burning alive, rape, and murder. Twentieth century history is filled with examples of widespread power abuses by the Bolsheviks, Nazis or Chairman Mao's Cultural Revolution: all examples of depravity, murder and genocide on a global scale. These relatively recent historical examples show death, abuse, and evil pointing to one central theme: the more power, the more abuse of power and depraved behavior by men. This concept of a fallen depraved mankind is fundamental to the Judeo-Christian ethic with numerous examples from both the Old and New Testament.

"Being filled with all unrighteousness, fornication, wickedness, covetousness, maliciousness; full of envy, murder, debate, deceit, malignity; whisperers, backbiters, haters of God, despiteful, proud, boasters, inventors of evil things, disobedient to parents, without understanding, covenant-breakers, without natural affection, implacable, unmerciful: who knowing the judgment of God, that they which commit such things are worthy of death, not only do the same, but have pleasure in them that do them" (Rom 1:29-32); "As it is written, There is none righteous, no, not one: there is none that understandeth, there is none that seeketh after God. They are all gone out of the way, they are together become unprofitable; there is none that doeth good, no, not one. Their throat is an open sepulcher; with their tongues they have used deceit; the poison of asps is under their lips: whose mouth is full of cursing and bitterness: their feet are swift to shed blood: destruction and misery are in their ways: and the way of peace have they not known: there is no fear of God before their eyes" (Rom 3:10-18); "Now the works of the flesh are manifest, which are these: Adultery, fornication, uncleanness, lasciviousness, idolatry, witchcraft, hatred, variance, emulations, wrath, strife, seditions, heresies, envyings, murders, drunkenness, revellings, and such like" (Gal 5:19-21); "God saw that the wickedness of man was great in the earth, and that every imagination of the thoughts of his heart was only evil continually" (Gen 6:5); "Behold, I was shapen in iniquity; and in sin did my mother conceive me" (Psa 51:5); "The heart is deceitful above all things, and desperately wicked: who can know it?" (Jer 17:9); "From within, out

of the heart of men, proceed evil thoughts, adulteries, fornications, murders, thefts, covetousness, wickedness, deceit, lasciviousness, an evil eye, blasphemy, pride, foolishness” (Mar 7:21, 22); “That which is born of the flesh is flesh” (John 3:6); “Because the mind of the flesh is enmity against God; for it is not subject to the law of God, neither indeed can it be” (Rom 8:7, R. V.); “And you hath he quickened who were dead in trespasses and sins, --- and were by nature the children of wrath even as others” (Eph 2:1, 3); “There is not a just man upon earth, that doeth good, and sinneth not” (Ecc 7:20); “We are all as an unclean thing, and all our righteousnesses are as filthy rags” (Isa 64:6).¹⁸

This is perhaps a bit much on examples of depravity, but this aspect of the Judeo-Christian ethic was well understood and part of the fabric of life in early America. This viewpoint had a profound influence on our founding fathers, the early educational and jurisprudence systems in 18th century America. The biblical viewpoint of the depravity of mankind was particularly predominant in the founding fathers’ early literature, including the United States Constitution, *Federalist Papers*, Bill of Rights and so on. We see this in comments from Hamilton: “Have we not already seen enough of the fallacy and extravagance of those idle theories which have amused us with promises of an exemption from the imperfections, weaknesses and evils incident to society in every shape?” Hamilton further writes, “As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust.”¹⁹ Consider also James Madison:

I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power, than by violent and sudden usurpations; but, on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have, more frequently than any other cause, produced despotism. If we go over the whole history of ancient and modern republics, we shall find their destruction to have generally resulted from those causes.²⁰

Thus, the Judeo-Christian concept of depravity was fundamental to the founding fathers understanding that “citizens” need the protection from depraved leaders who inevitably abuse or, in Lord Acton’s words, corrupt power.

The founding fathers early Christian viewpoint was colored by this concept of the inherent depravity in all men. Their remedy to depravity was lifelong learning with intellectual as well as a focus on spiritual growth in developing character. Much has been written about human bias. It takes many forms including mental, physical, tribal, religious and cultural to name just a few. One central aspect of bias however, it is largely self-centered and invisible to the individual possessing it.²¹ The founding fathers knowledge of their own depraved condition was often a blind spot visible only through the revelation found in the Judeo-Christian ethic. Like other fundamental biases of the human condition, they are mostly invisible to the individual and must be revealed by others. The rationality how to discern this corrupt depraved condition is provided by Custance:

if the Bible is correct in saying that man is a fallen, sinful and depraved creature (and it never says this of any animal), that sin has affected not merely his spiritual nature, but also his mental faculties, so that he can neither be wholly right in his motivations nor completely sound in his thinking. It must be clear that man cannot define true humanness by studying himself as he now is. Just as the man whose vision is faulty cannot fit himself with corrective glasses unless he has the help of someone who is not similarly afflicted, so if man's perceptive abilities are at fault he cannot obtain a true picture of himself either without outside help. He requires some yardstick external to himself, some standard of reference with which to compare himself, and thus to correct his definition of what humanness really is. Or, alternatively, such knowledge must come to him through revelation. It cannot stem from his own reflections upon himself.²²

This then is the key question: when it comes to what is moral or ethical, who determines what is right? Being depraved was a blind spot for our founding fathers, and for many current day Christians, this concept of depravity is quite unknown and invisible. It follows that in developing character and determining what is moral or ethical is for most Americans a spiritual question revealed by the Judeo-Christian ethic founded in the old and New Testament.²³ It is important for individuals and the nation as a whole to avoid anarchy with a drive towards "everyone did what was right in the sight of their own eyes."²⁴ Likewise, for many Americans who find spiritualism in their Christian faith, the standard defining moral and ethical behavior would be the Judeo-Christian ethic, the biblical revelation, preaching or biblical based commentary and the like.²⁵ It certainly was a commonly held view to a greater degree in 18th century America than today.

The second important aspect of the Judeo-Christian ethic, which is commonly misunderstood and yet is central purpose of Christian revelation as it relates to character development in the "spiritual" domain, is that Jesus of Nazareth was NOT a moral or ethical teacher in the sense of the historical view of moral and ethical codes. Unlike ethicists and moral philosophies found in Plato, Aristotle, Epicureanism, Stoicism (all pre-dating Christian writings) or say, Hobbs, Spinoza, Joseph Butler, Kant, Bentham or Mill from a more recent era, the teachings and claims of Jesus in the New Testament gospel derive their character from his role as the messiah. He was neither an ethics philosopher nor a moral teacher. There is nothing in the gospel that indicates Jesus was in the least preoccupied with his ethical condition.²⁶ He was sinless! Admittedly a number of ethical principles are found in the teaching of Jesus and the writings of his apostles. An ethical or moral life does not constitute the central theme of the New Testament message. Christian character for depraved mankind is not possible without the messiah and a relationship with the Christ. Character development as moral agent is a result of this relationship importantly, in a manner consistent with lifelong learning. In the New Testament the most explicit comments regarding the fruit of the spirit is recognizable in terms of development of character attributes such as: love, peace, patience, kindness, goodness, faithfulness, gentleness and self-control.²⁷ The moral and ethical character in thought and lifestyle are the result of growth in this relationship with the messiah, the achievement of a Christ-like personality, never the means. For example, the Apostles – Matthew, Mark, Luke and John – all capture the ethical teaching

of Jesus indicating the whole of the Old Testament law can be condensed into two simple “moral” imperatives: first, “love God with your whole heart, soul and mind” and second, “love your neighbor as yourself.”²⁸ Yet all these same evangelists and other apostles as well, write of Jesus with one manifest focus, as the messiah.

This messiah aspect of Jesus is fundamentally different than all other ethical systems. According to Greek philosophy, the chief end of man was the perfect development of his natural abilities. Aristotle made “contemplation and reason” height of man’s attainments while the Stoics said, “nature herself never gives us any but good inclinations” and so it goes. To the Greeks, the early Christians were considered deficient in education; the Romans accused them of defective patriotism.²⁹

Jesus of the New Testament is never portrayed as simply good, moral, or even a man of character, rather as a mediator between God and man. Without an essential focus on the Christian belief in Jesus as God incarnate, the Christian message is wholly misunderstood and misapplied. Consider the dogmatic and to many, very offensive statement by Jesus, “I am the way, the truth and life, No man comes to the Father but by me.”³⁰ Jesus speaks not only as authoritative, but as sovereign God in the realm of truth. Jesus forgave people of their sin. He did not come to usher in a new ethical system or standard of morality rather he came to establish a new kingdom. The Sermon on the Mount was viewed by many of his contemporary Greek and Roman ethical philosophers as weak and foolish; however, Jesus speaks of himself in the Day of Judgment.³¹ It is he who will decide the eternal destiny of humanity based on their relationship to him. His promise: *theirs* is the kingdom of heaven, *they* shall see God and *they* shall be satisfied with righteousness. Both aspects require the “grace” of God. This same principle was made by CS Lewis:

I am trying here to prevent anyone saying the really foolish thing that people often say about Him: “I’m ready to accept Jesus as a great moral teacher, but I don’t accept His claim to be God.” That is the one thing we must not say. A man who was merely a man and said the sort of things Jesus said would not be a great moral teacher. He would either be a lunatic – on the level with the man who says he is a poached egg – or else he would be the Devil of Hell. You must make your choice. Either this man was, and is, the Son of God: or else a madman or something worse. You can shut Him up for a fool, you can spit at Him and kill Him as a demon; or you can fall at His feet and call Him Lord and God. But let us not come with any patronizing nonsense about His being a great human teacher. He has not left that open to us. He did not intend to.³²

For the founding fathers and the typical Christians of that generation, and I might say for many today, the lifelong “spiritual” growth involving developing as men and women of character involves both breaking the power of sin and evil as well as embracing the power of good.

It follows that the nation’s Judeo-Christian tradition was well understood by the founding fathers and is evident in the Constitution, *Federalist Papers* and much of the literature of the 18th century American writers. The founding fathers were strongly influenced by the concept of the depravity and the human proclivity to abuse power. Constitutional

separation of powers, both in the federal systems as well as the independent states, held to a careful balance power so as to check these fundamental abuses. Thomas Jefferson in the Declaration of Independence declared “self-evident truths, endowed by their creator” – not a human system of morality or ethics. The Bill of Rights, the first ten amendments by James Madison all designed to limit the power of the federal government, are designed to protect the citizens (people of these United States) from (in the eyes of the founding fathers) a depraved, sinful, evil and powerful group like King George, the British Empire who proved to be costly in blood and treasure to the fledgling nation during the Revolutionary War. These early national documents were also designed to protect the citizens from a depraved and powerful group of future American citizens who would be elected to office or appointed to the courts. England certainly did not hold the exclusive market on depraved men and women. Protections include those mandated such as that Congress shall make no law, rights of the people to be secure, no citizen shall be held, people enjoy the “right” to a speed and public trail, all federal powers not delegated by the constitution are reserved to the states or to the people.

Thomas Jefferson not only wrote the Declaration but is known as the father of education for Virginia and founded the University of Virginia in 1819. Thomas Jefferson argued that education and development of character for the citizenry were vital to the health and longevity of the country. Other founding fathers who wrote and spoke extensively on education include George Washington, Benjamin Rush and Benjamin Franklin.³³

Jefferson’s view on education was directed towards both the average citizen and those with superior capacity for larger leadership and service.³⁴ Importantly for Jefferson, a traditional liberal arts education played an important role in building character. His view of “moral sense” is developed by a diverse and lifelong education and he specially recommended the use of literature.³⁵ Moral sense and character included habits such as gratitude, generosity, charity, kindness, truthfulness, a sense of justice, stability, organization, and courage.³⁶ For the professional Soldier, this list looks remarkably like the character attributes found in Army Values and the tone of our professional ethic. Jefferson’s emphasis on lifelong learning in the very broad study of literature, history, language, and philosophy was a means of promoting moral, intellectual and civic virtue.³⁷ Tolerance, wisdom, patience, and civility, character traits common in the genteel day of our founding fathers and to the “statesmen” of the 18th century, are often missing from the “in your face” politically charged, cyber environment of our day. The astute reader will see the parallel in these Jeffersonian ethical attributes and those writing of the Apostle Paul in the writing of the New Testament, the original source of character attributes such as love, joy, peace, forbearance, kindness, goodness, faithfulness, modesty, gentleness, and self-control.³⁸

More recently, the tradition of John Dewey has been ascendant. John Dewey (1859-1952) had a large influence over modern education in the US and worldwide. In the terminology of the Millennial generation, he might be considered a “Rock Star.” Dewey lived in a period of incredible political, economic, social, and technological change. He was born before the American Civil War, educated during the 19th century, and lived through two world wars and the early years of the Cold War. John Dewey has had a profound and lasting impact on education philosophy in the United States of America. John Dewey

published a plethora of books and papers (over 300), many of which are still required reading for education curriculum, particularly for undergraduate level education students. His impact has been decidedly hostile to the development of character in our educational system, thus to our Soldiers for generations. John Dewey's humanist and progressivism through utilitarian philosophy emphasized the importance of cause and effect relationships and a training/education system which narrowly focuses on "consequences" as a part of ethical decision making. Central to progressivism is the lack of discipline in the classrooms in the efforts to bring out the natural proclivity of students. Dewey's focus on what students do and contribute to society remains an important aspect of progressivist philosophy. Who a person is in terms of character, values, patriotism, and moral sense is not found in his philosophy.

Thus, John Dewey has had a profound and destructive influence on the nation's educational culture for at least two generations. The result of this influence in turn has had a decidedly negative influence on Soldiers in that our emphasis is on tactical and technical skills and training rather than developing character and leader attributes. The result of Dewey's influence has too often been an over-emphasis merely on technology, science, and the "functions" of our Soldiers. No one would argue against the need for tactically and technically competent Soldiers, particularly when considering more deployments into harm's way. On the other hand and in the words of General Martin Dempsey, "We learned after 12 years of war that character counts, and it counts mightily."³⁹ Striking the right balance is important. Why does character count and count mightily is a fair question. Consider Lieutenant Colonel (Ret.) then Brigadier General Jeff Sinclair, demoted two ranks for having an improper relationship with a subordinate and two other women. General (Ret.) David Petraeus, entered a plea agreement with the Justice Department for giving his mistress secret information, Lieutenant General (Ret.) William "Kip" Ward was demoted for lavish travel records and ordered to repay the government some \$82,000. The US Army had 129 battalion and brigade commanders relieved for cause since 2003, mostly for a negative ethical/command climate or personal behavior in violation of the UCMJ.⁴⁰ Our Army, along with all of the services, continues to struggle with a host of sexual assault and harassment violations, numerous cases of contracting fraud/waste and abuse, and the list could go on. Earlier I included a rather long list of examples of "depravity" with corresponding bible references. Here's why: with more time this modern day list of character flaws altogether too common in our professional Army, could go on and on and on.

John Dewey remains a powerful influence in education today, not just in America but worldwide. There continues to be a crisis in American education from the lack of discipline in the schools, incompetent teachers and curriculum such as Common Core which focuses narrowly on language arts and math skills at the expense of building moral character, the arts and a holistic approach to curriculum. John Dewey's influence through proponents of his progressive education philosophy represents an unrelenting attack on parochial schooling, the traditional liberal education and a generally hostile attitude towards any religious or spiritual aspects found in education. Life lessons like teamwork, mutual trust, and character development through a comprehensive learning approach, in the words of Thomas Jefferson, by reading good books, and lots of them, are all missing from progressivism. Like

Friedrich Nietzsche, Dewey's progressivism points toward the fallacy that conventional Judeo-Christian ethic has created a slave morality – it is an obstacle to education and he wrote that “religion is the opium of the people” in the style of Marx.⁴¹ In 1934, John Dewey signed the Humanist Manifesto written by Raymond Bragg, a document meant to transcend and replace previous deity-based systems.⁴²

For those readers who are parents of school aged children or who are familiar with state of education and schools, it is obvious that something is deeply flawed in the American classroom. For those readers who are not familiar with the generally dismal state of public education, note that all of our Soldiers experience some degree of this influence from their formative years as a student. Political philosopher (and parent) J. Martin Rochester rightfully is concerned in asserting, “It is hard to say which is declining faster, academic standards or ethical standards.”⁴³

Dewey's progressivism as an educational philosophy has for at least two generations included the need for teachers to approach learning with a “hands off” approach. Dewey's educational philosophy emphasizes the importance of letting the student set the curriculum as if the inclinations of the children, some of them spoiled, selfish, and depraved little brats, are more important than the teachers or school boards or state educational administrators. While many teachers see the need to bring back character and values, of great concern is Sociologist James Hunter's observation, “Character in American education has not died a natural death. There has been an ironic and unintended complicity among the very people who have taken on the role of being it guardians.”⁴⁴ The seeds of progressivism have found fertile ground in the American education system. Concepts such as “values clarification” for children or “I like me” proponents are inspired by Dewey's progressivism. Other programs strongly influenced by Dewey include “no child left behind” or “Race to the Top” and most recently the common core.

After generations of progressivism, our national school system, obsessed with an “I'm OK, you're OK” philosophy and the like, has come to the realization that our kids were not prepared for college and could not accomplish most basic reading or mathematics tasks. Thus, many education professionals, administrators and especially politicians at all levels have hopped on the “common core” band wagon. Common Core State Standards initiative is an educational assembly in the United States that details what K-12 students should know in English and Mathematics at the end of each school year.⁴⁵ Common Core is at best, “a band aid for a symptom of a much larger problem.”⁴⁶ Standards emerged to remedy the problem of failing students on a national scale with fewer and fewer high school graduates prepared for higher learning challenges at university. We see the same challenge in our officer corps at the Command and General Staff College with numerous cases of plagiarism and the lack of fundamental writing skills. Concepts like common core as a curriculum guideline are sound in principle but shortsighted when it comes to lifelong learning. No one would argue the need for an education that sets a standard and holds both teachers and students accountable to meet that standard. More importantly and perhaps the only real good that will come as a result of common core is that for the first time since John Dewey's progressivism took hold in post-World War II America, the debate with education administrators, school boards, teachers, and parents is ongoing and all are seriously discussing

the role of a content-based curriculum designed to improve our students. Many would argue that states rather than the federal government are more than qualified to set these educational standards. Much of the negative Common Core criticism stems from the federal bureaucratic approach in the Department of Education advocated by those who are acolytes of John Dewey's progressivist philosophy. Several significant Common Core issues exist, from its narrow focus on only English and mathematics or some of the ridiculous and unrealistic standards for young people, especially kindergarten through 3rd graders. There are no standards or emphasis on teaching children to work together as a team, or on character and values development. Special needs children are apparently "left behind" – history, music, the arts are also left behind with Common Core. States, with help from educators, local school boards and districts rather than federal bureaucrats, should be responsible and held accountable for Common Core standards. The role of teachers and parents, perhaps the most critical element in the K-12 education system, are for the most part, AWOL in the common core political discussion. Common Core's shortsighted approach of narrowly focusing on just language and mathematics misses a fundamental point. What a student does in terms of passing a test, learning English or mathematics attaches value exclusively on those functions. While learning English and math are important, so are topics such as literature, history, language and arts, all of which promote moral, intellectual and civic virtue. All are missing from Common Core and is the fundamental point of this paper. The narrow focus on what skills a child possesses is not as important as who a child becomes in terms of character. The broad education of our children, these same children who grow up to join the profession of arms, services and other important vocations, deserve the broad education that develops intellect, patriotism and produces men and women of character.

The Remedy for Shallow Character

So Army leader, just what are you doing today to develop Soldiers of character? How are you inculcating the Army values into the being of your team? How are you communicating your own character to your team? Is your focus only narrowly on what your Soldiers do in terms of skills, tactical and technical competence? What time and intellectual energy are you investing in transformational leadership attributes such as our Army Values, empathy, the Army ethos, and profession? Probably most of your focus is on transactional competencies because you find like most, it's a lot easier. Like the question earlier about what is "moral," these types of questions about developing Soldiers of character are not easily answered. Life in the institutional Army is busy, even busier in the operational units. Time is precious and hard decisions about where to take risk must be made daily.

Inculcating "character" into the being of our Soldiers has always been a daunting task, perhaps more so today than ever before. While an emotional word, "inculcating" is more precise and is value-added. We don't want our Soldiers to recite the Army values on a promotion board, we want them to live the Army values, particularly when making tough ethical choices so common to combat operations. As ambiguity, uncertainty and complexity increase in the operational environment, our Army leadership is relearning the hard lesson in importance of character. This challenge is becoming increasingly difficult as shown above with the challenges of a national education system focused predominantly on passing

English and math tests rather than a holistic curriculum designed to make better thinkers, better learners and citizens grounded in ethics and character. John Dewey's progressivism continues to have a strong and decidedly negative influence on character and ethical teaching. While changing the public school system in America is beyond the scope of this paper it is important for Army leaders to realize that "character" and living the Army Values is a foreign concept to many of the young Americans who join our team. Some of them are depraved and criminal in behavior and character but there is hope! Transactional competencies such as behavior and achieving tasks are what our Soldiers do – relatively easy, a place to stop investing time, resources, and effort. Changing Soldiers through transformational leadership is another story. Inculcating Army values while not proselytizing, building empathy while preparing Soldiers for the rigors of combat, instilling the Army ethos while discouraging arrogance or discipline without becoming a "yes-man" is tough government work.

"Not So" Critical Thinking Example

Army doctrine notes that critical and creative thinking assists commanders in understanding and decision making. Critical thinking examines problems in depth from multiple points of view and importantly, *critical thinkers are purposeful and reflective* thinkers who apply judgment about what to believe or what to do in response to known facts, observations, experience.⁴⁷ Note the italics in this sentence, particularly the third person, plural present tense of the word TO BE – critical thinkers "are" in this sentence. The doctrinal definition has it right, thank you Combined Arms Doctrine Directorate! Unfortunately and too often the Army's approach to critical thinking is that it is a set of skills or processes that methodically takes apart the parts of thinking in order to apply universal intellectual standards.⁴⁸ As if this shallow skill set is somehow magically transferred into the mind of commanders or Army leaders which will have utility. This approach is similar to the numerous "digital" training requirements which offer e-Learning, AR 350-1 required quarterly and annual training via a web site presentation mostly containing a "death by PowerPoint" approach. Topics such as Alcohol/Substance Abuse and Prevention or Sexual Harassment/Assault Response Prevention, Combating Human Trafficking, suicide prevention taught in this manner is mostly shallow learning that is flushed after the course. For many, it is a drill that involves going straight to the test page and Google the questions in order to get a 70 percent passing score. Not only is this an unethical approach, more importantly passing a test is a poor measure of learning things that really matter like how to build a team through mutual trust or character in our Soldiers or importantly, commitment to the profession of arms. Digital testing from this training approach, furthers the illusion that "what you do" is important, rather than who you are. This is foolishness and not good critical thinking as it is a costly investment and not just in dollars, but also in the most precious resource we have, our Soldiers time.

Developing leaders of character must get to the "who" an Army leader is and must be internalized into the very being or the DNA of our Soldiers. Concepts such as character must be lived rather than reduced to a set of Soldier of the Month board questions dutifully

regurgitating the Army values. Staying with our critical thinking theme consider Facione's approach:

The ideal critical thinker is habitually inquisitive, well informed, trustful of reason, open-minded, flexible, fair minded in evaluation, honest in facing personal biases, prudent in making judgments, willing to reconsider, clear about issues, orderly in complex matters, diligent in seeking relevant information, reasonable in the selection of criteria, focused in inquiry, and persistent in seeking results which are as precise as the subject and circumstance of inquiry permit.⁴⁹

Note the internalization of who a critical thinker is, not competencies one possesses. In many universities critical thinking is taught not just as a process or set of skills but as an approach to developing the individual into an intelligent thinker by developing the "practice" of critical thinking in a manner designed to pursue lifelong learning.⁵⁰ Importantly, like developing character, there are no shortcuts to developing an intelligent and reasoning mind. Being a critical thinker comes only with a well-trained mind comfortable with logic, rhetoric and developed with experience. As Thomas Jefferson advised his nephew, "read good books" with a commitment to lifelong learning.⁵¹

Conclusion

For those readers looking for a check list or a process or perhaps some OER bullets indicating that they are serious about building character as part of their leader development program – *sorry!* This expectation is as misguided as assuming that the Soldiers coming to your formation directly from nation's educational system will come to you with a strong sense of character and intelligence. The many will not and will at best, be competent in English and mathematics, precisely as common core mandates.

It's been said, "It takes about ten years for the Army to develop a Captain with ten years of experience." Of course, there are no shortcuts to experience and unfortunately, many of our Soldiers receive only a year or two of experience every ten years. Like the Christian character development earlier in this paper, the apostle Paul's guidance to the early church in Rome, "be transformed by the renewal of your mind" – never says that it will easy or fast. Like Thomas Jefferson noted, it takes a lifelong learner and it is a lifetime pursuit. For every meaningful transformation involving growth, there is no short or easy solution. So it is with the development of character in our Soldiers, it must be done one Soldier at a time – the daily, monthly, year after year growth towards being a mature Soldier of character.

"Adaptive Army leaders for a complex world" is the Chief of Staff of the Army's top priority and our approach to developing adaptive leaders demands that the Army's leadership end the shallow focus on processes and skills. Just as our mission command doctrine is centered on the commander and human activities rather than on radios, computers, the cyber net and processes, so should the Army's focus change when it comes to Army values in general, and character in particular! Changing Army leaders "being" should be the deeper focus when it comes to transformational development of character. This type of change in the thinking and DNA of our Soldiers goes hand in hand with developing adaptive leaders and Soldiers who are committed to our Army profession. Let's not be seduced

into thinking it is easy, short term or that developing men and women of character can be a checklist learned in a digital learning class. It will not be found in any religious, philosophy, history, or science book that is gathering dust on the library shelf. It's not like those amusing hucksters who promise the Pilates 15 minutes to the perfect abs, just buy my workout video. It takes patience and a lifetime of personal and professional experiences as well as the comprehensive study to develop intellect or in the words of Thomas Jefferson, by reading "good books" study and learn from a lifetime of example from ethical Army leaders. And sometimes, the best lessons in life are learned through failure or watching someone else fail when it comes to moral imperatives and the Army values. Importantly, developing character depends on the relationships of our senior Army leaders to our younger Soldiers demonstrating by example, the character traits of loyalty, duty, respect, selfless service, honor, integrity and personal courage.

Finally, as General Dempsey noted "character matters and it matters mightily" because attaching value to the individual rather than the skills, tactical and technical competence that an individual possesses. This realization is where the long, arduous and lifetime journey to preparing leaders of character starts.

Notes

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Chapter 18

Stewardship in the Army and Stewarding the State

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In June 2010 General Stanley McChrystal submitted his resignation as Commander, International Security Assistance Force (ISAF) Afghanistan. He resigned not because of a policy dispute, lack of competence, or differences in opinion on strategy with the president. No, he resigned because the president was going to fire him over remarks that both he and his staff made to a reporter, Michael Hastings, and were published in *The Rolling Stone* magazine. His comments and lack of professionalism in not policing or correcting the remarks of his staff showed a lack of respect for the elected and appointed political leadership and undermined the trust needed for effective civil-military relations.¹ In the president's own words, "It undermines the civilian control of the military that is at the core of our democratic system and it erodes the trust that's necessary for our team to work together to achieve our objectives in Afghanistan."² In this highly publicized incident, General McChrystal betrayed the trust of his superiors and showed a lapse in stewarding the profession.

Army Doctrine Reference Publication (ADRP) 1,³ *The Army Profession*, highlights recent efforts to provide clarity to the Army as a profession. A key component of that involves stewardship. Stewards of the Army profession have two responsibilities: one of internally stewarding the Army as an organization, and the other of externally stewarding the trust of the people of the nation. The US Army is struggling with identifying what it truly means to be a steward within our professional ethic. This paper will address some of that confusion.

We share the perspective of Colonel (Ret.) Anthony Hartle that the professional military ethic provides a framework or a foundation upon which to base moral decisions.⁴ Accepting the professional ethic indicates a commitment to a common set of values that is unique to the profession and different from those of society in general. Yet, society allows the profession to exist within the values embraced by society. Part of the professional ethical obligation is the respect for the space society carves out for it. Society sees a need for a military. It provides space for the profession of arms to operate within society, allows it to set jurisdictions, to police itself, and to determine entrance requirements and other aspects related to a profession. Society does this, trusting that the military will accomplish missions towards outcomes that benefit society. Therefore, the professional ethic should include the obligation to steward this trusting relationship between the military and the civilian populace it serves.

As we examine what stewarding the profession might mean in the context of the US Army, we look for a view of the profession in the foundational doctrine of Army Doctrine Publication (ADP) 1, *The Army*.⁵ This doctrine states that the Army is built on an ethos of trust which underpins the characteristics of military expertise, honorable service,

esprit de corps, and stewardship. The document further states that stewardship reflects a professional obligation to the Army and to the nation. It is clear in the Army's doctrine and emerging work on the Army ethic that the Army officer who stewards the profession has a dual responsibility. However, the mechanisms and policies of the Army seem to reflect a focus more for the internal short-term good of the Army and not necessarily for the external long-term good of the nation. Stewarding the profession, from the Army's viewpoint, may reflect more on maintaining its existence and internal stewardship than on stewarding the trust of the people it serves. The paradox is that the Army says it promotes stewardship, but it really is more narrowly promoting a stewardship of the Army. Specifically, we need to examine how the Army approaches the responsibility of stewardship. It may be that the Army's culture, policies, and procedures actually discourage stewardship in service to the nation, which is a clear indicator of how committed the Army is to living up to its professed ethos. First, we need to examine the definition of stewardship from a more academic perspective.

What is Stewardship?

One can find several approaches to defining stewardship in civilian literature. Some concepts of stewardship involve an ethical or legal responsibility to another, much like a trustee. From this perspective, a steward is one who is trusted to look after or tend someone else's property, resources, or interests.⁶ Others take the approach from a psychological theory perspective, describing stewardship as members of an organization seeing greater long-term benefit in other-focused behaviors than in self-serving, short-term, opportunistic behaviors.⁷ This approach to stewardship indicates a sense of obligation to others based on the intention to uphold the trusted relationship between the parties involved. Stewardship can also extend to managing resources to ensure the sustainment of future generations.⁸ This concept of stewardship posits that people are entrusted with resources, and as trustees, must manage them so that their descendants will survive.

Inherent in most views of stewardship is the concept of trust between the steward and those with whom there is a stewarding relationship.⁹ Stewardship also involves the premise that the steward will act beneficially for the other parties involved. In a stewarding relationship there is trust that the steward will take into account the best interest of those with whom he or she interacts, and they in turn have confidence in the steward.¹⁰ This combination of trust and confidence is dependent upon the commitment of the steward to act appropriately. In an environment of stewardship, control mechanisms are not necessary and are perhaps even counter-productive since members of the organization place the collective interest above their own.¹¹ A stewarding relationship hinges upon the mutual moral commitment that binds parties towards achieving a common goal. This social contract gives rise to a sense of moral obligation.

Organizational Stewardship

Organizational stewardship calls for an orientation that rises above personal interests. In the context of an organization, a steward needs to be aware of the trade-off between personal interests and organizational needs. The basic assumptions of stewardship are

collaboration and cooperation within the organization, instead of infighting, competition, and contention, and of service to the organization instead of individual self-interest.¹² Stewardship acknowledges that what one has is enough, that more may not be forthcoming, and that people should broaden their horizons beyond self-oriented achievements. This does not mean to ignore personal goals. A leader practicing effective stewardship can help subordinates meet personal goals by working toward organizational, collective ends. Hence, the true opportunity for a steward is the realization that the benefits gained from pro-organizational behavior are higher than the benefits gained through individualistic, self-serving behavior.¹³ This perspective posits that the steward sees personal interests the same as those of the organization. As a consequence, the steward will work to promote the organization's well-being in conjunction with the welfare of its members.

Stewarding leaders focus on leaving a legacy, and they do it by developing subordinates and carefully shepherding resources and talents to provide the most good for the organization.¹⁴ Army doctrine indicates that all members of the profession should be stewards of the profession.¹⁵ To do this they should be motivated by internal values and beliefs aligned with those of the organization, as opposed to externally provided rewards and punishments which create a short term loyalty more to the reward than to the values.¹⁶ When stewards share the belief in developing individuals and the organization for the long term, there is a true alignment of interests, supporting internal motivation. The emphasis on doing what is best for the organization over self is an attitude in which people tend to think in terms of "we" rather than "me." Loyalty to the greater "we" of the organization over the lesser "me" of self is what provides an alignment of values, as well as collaboration and cooperation to accomplish the greater good. Officers in the Army swear allegiance to something larger than themselves, they swear allegiance to the Constitution and not to the president or to the Army.

Army Stewardship Challenges

In focusing on the Army we can look to their doctrinal publications, regulations, and policies for indicators of the service's perspective on stewarding the profession. The Army's keystone doctrinal publication, ADP 1, addresses stewardship as an essential characteristic of the profession.¹⁷ The Army's perspective poses that stewardship is a key aspect of the relationship between the Army and the American people. This stewardship not only involves responsible use of the resources provided to the Army, but also stewardship of the relationship between the Army and the people it serves. Incorporating the concept of stewardship into the concepts and doctrine of the Army is admirable, but to discern if that is done effectively we must understand what role stewardship plays in our professional ethic. Army doctrine on stewardship is Army centric, paying less attention to the Army's role of stewarding the nation's trust. From an Army centric perspective, it is not clear if we can assume that the needs of the Army are the same as the needs of the nation.

According to ADP 6-22, *Army Leadership*,¹⁸ the Army's doctrinal publication for leadership, the leadership competency of stewardship of the profession involves improving the organization and its people, as well as the idea of accomplishing the long term mission of the Army to fight and win the nation's wars, which is integral to stewarding the nation.

Stewardship is a competency which incorporates several other competencies, such as creating a positive environment, self-improvement, and developing others. Although there are characteristics of stewardship throughout ADRP 6-22 (selfless service, oath to the nation, positive climate, developing others) the specific definition of stewardship is resource focused:

Stewardship is the group of strategies, policies, principles and beliefs that pertain to the purposeful management and sustainment of the resources, expertise and time-honored traditions and customs that make up the profession. Leaders acting as good stewards have concern for the lasting effects of their decisions about all of the resources they use and manage. Stewardship requires prioritization and sacrifice.¹⁹

The Army's leadership doctrine also states that, "Improving is an act of stewardship, striving to create effective, efficient organizations."²⁰ Part of improving the organization is establishing a climate for developing people and the organization with a long-term perspective.²¹ Developing leaders is an integral part of leaving a legacy for the Army so that it can continue to perform its mission of protecting and defending the country. Army leaders, as stewards of the Army profession, must place the needs of the Army as a whole above their organizational or personal needs. This is particularly true in developing subordinates. The Army expects all of its leaders to develop subordinates. One of the competencies in doctrine in the Army Leader Requirements Model is stewarding the profession.²² Being a stewarding leader involves improving the organization beyond the tenure of their current position. This means "taking action to manage people or resources when the benefits will not be seen during a leader's tour of duty within an organization."²³ Not only must Army professionals develop others, they must prepare themselves to promote the long-term stewardship of the Army. This act requires a careful balance between the long-term needs of the Army, the mid-term needs of subordinates, and the immediate needs of achieving the mission, which may cause some conflict between the internal and external priorities of stewarding the profession.²⁴

Stewards should focus on organizational structures that empower instead of those that control. A steward is more interested in facilitating the growth of subordinates for the long-term, rather than controlling and keeping people in their place.²⁵ The military penchant for control is counterproductive to long term stewardship of the profession. The hierarchical, rank structured military readily accepts unequal distribution of power and is focused more on short term mission success and control of its units. Clearly, military leaders have the authority and responsibility to control their organizations. Control is essential for accomplishment of organizational goals and objectives. However, when members perceive excessive control they become less willing to commit to accomplishing organizational goals since they have less ownership and buy-in. Even though recent conflicts have resulted in the Army relinquishing many aspects of control to empower junior leaders, the culture is still very control oriented. The Army doctrine on mission command encourages disciplined initiative, using mission orders, and accepting prudent risk, all to empower subordinates to execute the mission within the commander's intent.²⁶ Yet as the forces return from operational deployments to duties back in garrison, unit climates are tending

back toward centralization of control and away from the empowerment of leadership through the mission command philosophy.

As the Army transitions to a less operational environment, the policies for promotion are changing to reflect reduced force structure levels. The actions necessary for this reduction promote a more individualistic attitude, as previously masked OERs are open to review and officer separation boards are an annual occurrence. Desire to remain part of the profession may encourage undesired internal competition, risk aversion, and resource conflicts as leaders compete for fewer slots. Young leaders competing in such an environment will face decisions for furthering their career that encourage selfish and self-centered behaviors, which run counter to good stewardship within the profession.

Culturally, the United States is more of a short-term oriented country. Short-term oriented cultures emphasize quick results and instant gratification, while long-term oriented cultures accept slow and steady activity to achieve results and are willing to subordinate their own personal desires for a long-term purpose or goal.²⁷ Frequent short-term deployments and rotation of commanders every two years exacerbate this cultural near-term focus in the military. The urgency of the short-term nature of the mission can override the long term benefits of taking care of the unit and the Army through professional development of its Soldiers. The 2012 Center for Army Leadership Annual Survey of Army Leadership (CASAL) showed that Army leaders ranked the competency of “develops others” much lower than all of the other Army leader core competencies.²⁸ It is hard for leaders to focus on goals five-to-ten years in the future when their deployment is for one year and they are going to another assignment at the end of the second year. It is hard for a commander to let outstanding officers attend professional military education, which will benefit that officer’s career and the Army in the long-term, but may hurt the unit when they are needed for the fight now. A five-to-ten-year time span translates to three-to-five assignments for an officer, leaving them far removed and not in a position to care about the legacy of their decisions made years ago.

Short-term mission focus can also engender toxic leadership. The Army has relieved several commanders over the past few years for behaviors that could be classified as toxic. Toxic leaders focus on their self-interest and short-term mission accomplishment and are less concerned about morale or developing a learning organizational climate. They are perceived by their subordinates as self-serving and motivated by their own career progression.²⁹ Toxic leaders are successful in accomplishing the mission, but at a high cost to their subordinates. In a 2011 study by the Center for Army Leadership, only 13% of officers in the CASAL study indicated that toxic leadership was not a problem, leaving 87% who felt it was a problem. Even more concerning is that 39% indicated it was a serious problem.³⁰ The paradox of stewardship versus toxic leadership is that toxic leaders tend to get good short-term results from subordinates who are fearful of reprisals for poor performance. Toxic leaders also focus on their personal needs and the organization’s short-term needs, to the detriment of the subordinates, to get the mission accomplished. This focus on achieving results reflects well on them and leads to their promotion. This reward reinforces negative behavior, both in their unit as their subordinates emulate this conduct to get promoted, and

in their future units since this behavior has proven successful for them and others in the past.³¹

Separation from the People

Stewardship in large scale technical complex systems such as the military presents unique challenges. Today's military comprises a collection of complex technological systems and an intricate web of social and organizational relationships. As systems grow in complexity and technological sophistication, they can become further removed from the society they serve.³² The system becomes more self-perpetuating than subservient to the society it supports. This puts even greater pressure on military professionals to be stewards of the relationship with the nation they serve. As the nation becomes more reliant on experts with technical backgrounds to watch over military systems, it is possible to lose sight of how well the military is living up to its obligation as stewards. What is lost is perhaps a sense of accountability. The very people the military swears to support may cease to hold the military profession accountable for the consequences of failure, while the military becomes more concerned about stewarding itself than the nation's trust.

Our nation enjoys a highly trained, professional military that has garnered the respect and gratitude of the people it serves. Nevertheless, in recent times this military has suffered defeats by more poorly equipped, less professional foes. Our military can brilliantly win battles and skirmishes, only to be less than successful in the larger strategic context, e.g., Lebanon, Somalia, Iraq, and Afghanistan.³³ Perhaps the widening separation between the military and the public has disrupted the process of accountability from these events. Trying to hold highly trained and educated military professionals accountable for failures in their craft may represent substantial risks for limited gain to our elected representatives. Too often we see leaders quick to share the good news of successes by Soldiers, Marines, Sailors, and Airmen, yet tend to not be so open about criticism of larger issues and poor operational judgment by senior leaders. Stewards of the relationship between the military and the nation should ensure their policies and actions reflect accountability, without the need for detail-focused external oversight.

The military breached the trust of the nation and defaulted in its stewardship of the nation in at least two ways. The first is in the way it handled sexual assault issues in the Army, and the second is demonstrated in the lack of support and the manner of dissent that some of its senior leaders exhibited for the elected political leadership. Sexual assault and misconduct charges are well publicized in the media, with charges filed against high ranking general officers all the way down to lower enlisted. Several members of Congress even wanted to step in and take away the military's ability to deal with such cases since so few were prosecuted and convicted.³⁴ General (Ret.) McChrystal exemplifies another type of breach of trust in his failure to police his staff in their criticism of the president and vice president, especially in front of a news reporter. This was also exemplified in the revolt of the generals during the Bush administration when quite a few retired generals expressed their displeasure over how the military was being treated, and in particular how the Secretary of Defense, Donald Rumsfeld was performing his job.³⁵ In at least these two areas,

the external stewardship between civilians and the military has created a lack of trust and shown a lack of stewardship.

The all-volunteer Army has further exacerbated a separation between the people of the nation and the military. As fewer members of society actually serve in the military, the people of the country become more and more disconnected with their Army. Less than 1% of Americans serve in uniform for the armed forces. As the saying went in Iraq and Afghanistan, the Army is at war while America is at Walmart. There is definitely less connection with today's professional Army than the conscripted citizen-Soldier Army of years past.³⁶ Unless leaders invest in developing subordinates to be good stewards in service to the nation, the armed services could evolve to the point they may not best serve the interests of the people of the United States.

Assessing Who to Keep

There are some distinct issues with stewards in the military which are not the same in other professions. The Army has an up or out policy where Soldiers cannot stay at the same rank for an extended period of time. The rank structure is a pyramid and as each new promotion gate is reached, not everyone makes it through. Those who are not promoted are eventually forced out of the service. This poses some problems for a stewarding leader who wants to develop their subordinates.

The Army does not have the luxury of determining how many Soldiers it receives or how big a budget it gets. The Army has input, but it is the civilian, politically elected leadership who decides. For instance, in 1992 the Army stood at about 772,000 Soldiers. Due to the "peace dividend" from the Soviet Union breaking up, Congress and the president decided to reduce the Army to 489,000 active duty Soldiers – a 283,000 person reduction in the force.³⁷ About one out of three Soldiers were told to leave the Army. This type of action is being replayed, although not quite as drastically, as the Army faces another force drawdown, sequestration, and looming inter-service budget battles. These actions create tension within the stewarding leader as the external responsibility to let people go conflicts with the internal responsibility to develop and shepherd resources, which includes taking care of people.

A stewarding leader who focuses on his own organization and developing his own people will have a difficult time discharging many of the very subordinates he is responsible to steward. As officers rate their subordinates, Officer Evaluation Reports (OERs) consistently become inflated because raters are trying to take care of their own people, as an internally focused steward would. A leader who stewards the profession, however, will understand the need to keep the best Soldiers in the Army. As a steward who develops subordinates to take positions of higher responsibility, and who works with subordinates to teach them to eventually take over his job, there is a knowledge that not all of his subordinates can or will get promoted. A steward of the profession has the responsibility to accurately rate subordinates so that only the best will get promoted, knowing that some will be discharged from the Army through the steward's actions. This involves a distinct mindset of putting the needs of the larger organization above those of self or subordinates. This aspect diverges from the responsibility to develop subordinates. In fact, it becomes the exact opposite

of developing subordinates. It is the responsibility to terminate employment, which on the surface appears not to be a stewarding action, especially from the individual's perspective who is getting fired. It becomes a conflict between external and internal stewarding.

Competitive promotions and the drawdown create quite a dilemma facing the stewarding leader. The policies of the Army may inhibit stewardship, or at a minimum not reinforce it, requiring the Army to make some significant changes to accommodate the ideas it is espousing. An important aspect for the way forward is to have the Army relook its system of rewards and promotions to ensure that stewards of the profession are promoted and allowed to continue serving. The rewards of the organization need to be aligned with its espoused values. For example, the Army recently implemented a new OER. One of the categories on the OER is how well the officer develops people and the organization with a long-term perspective (DA PAM 623-3).³⁸ A sub-element of this category is to evaluate whether the officer acts as a steward of the profession. However, the criteria for this assessment is lacking, only referring to how the officer makes choices that ensure the Army is capable of performing its core functions.

One could view the Army focusing on its unique functions as roughly parallel to an individual focusing on personal achievements rather than service to a higher entity. This runs counter to most of the thinking and writing about stewardship we see in our Army doctrine. On the other hand, we do see reference in the OER policy to putting the welfare of the nation in the Army's value of selfless service. However, the preponderance of the evaluation is on performance and potential for promotion. Evaluations are used by promotion boards and assignment managers. All of this presents a challenge to stewards of the profession who must balance the need to pick competent leaders of the profession with the need to foster member efforts towards long-term goals of service to the nation.

Not only do Army leaders need to compete internally with their peers for quality evaluations by superiors, they will also have to compete for their job. The Army is reducing its force and promotion rates are returning to more historic levels, causing competition for positions. When the true steward competes with someone who is out for themselves, the steward is much less likely to be retained and promoted. Stewards tend to give credit to others and sacrifice their own personal agenda for the good of the organization. The implementation of Army policies and procedures may eliminate humble stewards who look to give credit to others, even though doctrine is now espousing that leaders should have stewardship as a competency. The system creates a lack of alignment of promotions with espoused values.

The Way Ahead

The military is in the business of leadership at the point of death. Our leaders lead men and women into combat against a thinking and deadly enemy. Employees of most professions do not have this added dimension of service in the face of grave danger. It takes more than monetary incentive to achieve the type of dedication, service, and commitment required to successfully serve in the military. Rather, many who serve will accept some level of personal sacrifice to be involved in something bigger than themselves. Military members swear an oath of allegiance to uphold and defend the Constitution of the United

States of America. This act formalizes the relationship as subservient to the people of the United States, putting the interests of the nation ahead of personal interests. The military is charged to be a steward of all granted to it by the people of the United States. The public expects faithful stewards and the military has a responsibility to be those stewards.

In the Army leaders will continue to come and go, but those who lead as stewards of the profession place the good of the nation above their own, thereby improving the organization and leaving the service better prepared for the future. They have a higher calling than preserving just the individual or just the organization, they have the obligation to serve and protect the nation by fighting and winning its wars. Unlike businessmen answering to their stockholders, the military answers to the people of the United States. Stewards must be motivated intrinsically and see their position as a calling more than a career or a job. The public's trust and confidence in its Army is not negotiable. Leaders must have the competence and commitment to be effective stewards of their profession and to live up to the ethic of the profession. They must rise to the challenge of how to create a culture within the profession that recognizes and rewards stewardship in service to the nation. If the distance between our profession and the people it serves is widening, making it more difficult for the people to enforce accountability, our obligation is to hold ourselves accountable. Perhaps it is time to renew our approach to stewarding our profession and maintaining our ethic of service to the nation, as exemplified in previous centuries.

No other profession holds out to the worthy so certain a reward for intelligence and fidelity, no people on earth so generously and willingly accord to the soldier the exalted praise for heroic conduct in action, or for long and faithful service, as do the people of the United States; nor does any other people so overwhelmingly cast away those who fail at the critical moment, or who betray their trusts.

- General William T. Sherman, speaking to the first class
of officers and Soldiers of the School of Application
at Fort Leavenworth, Kansas, 25 October 1882.

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Chapter 19

Officers Should Not Vote

LTC Kevin Toner

Military officers should not vote. This paper is designed to spark a conversation among the profession about the propriety of officers voting. However, before a discussion can commence, the reader must be disabused of an important point. This paper *does not suggest* a policy to restrict an officer's right to vote. Rather, it suggests a professional norm that officers voluntarily abstain from voting in federal elections – elections for congress and the president. This treatment is limited to officers and federal elections because of the senior-subordinate relationships between military officers and elected and appointed political leaders. The counter-arguments to this position are many, but this paper does not address them all; the profession is encouraged to discuss the following's merits.

Army officers do vote and care deeply about voting. Heidi Urban conducted a ground-breaking, Army-supported survey to determine the Army's voting proclivities. She found that 81 percent of officers self-reported as to voting in the 2008 presidential election compared to 64 percent or 76 percent, depending on the survey, of Americans having voted.¹ Accepting that the level of voting in self-report surveys is inflated because respondents exhibit a social-desirability response bias, officers still turnout at higher levels than the general electorate.² Widening the aperture to the military writ large, the Federal Voting Assistance Program (FVAP) finds that turnout has been increasing over time from 53 percent in 1996 to 73 percent in 2004. Extrapolating, one can conclude that the 81 percent turnout of officer-voters in 2008 is completely feasible. Indeed, officers in 2008 may have outvoted their civilian counterparts by up to 23 percentage points.³ Regardless of actual turnout, 93 percent of officers surveyed by Urban agreed with the statement that members of the military should vote.⁴ Furthermore, nearly 80 percent of officers indicated they actually encouraged others in the military to vote with the percentage rising with rank (and presumably influence).⁵ Finally, and most disconcerting, 27 percent of officers reported that another officer tried to influence their actual vote choice at the ballot box.⁶ Clearly, voting in federal elections is common and important among Army officers. But, should it be?

When first posed with the idea of voting abstinence, the most common reaction is a more colorful version of, "That's crazy!" A senior official at the FVAP told the author several years ago, paraphrased, "I've heard about that idea, but I've never actually seen it in writing." This is that paper.

A recent article on Army.mil, written by an employee of the Department of Defense's Army News, seemingly written to encourage military voting in the 2014 mid-term elections, argued that if the nearly 2 million military members voted, they could affect the outcomes.⁷ Although the nature of the American single-member-district, non-transferrable vote electoral system combined with the partisan and ideological distribution of military members makes affecting electoral outcomes extremely unlikely, the argument raises the

question, “Should they?” Is it proper for the military to affect or attempt to affect federal election outcomes?

No. Taking action to affect electoral outcomes breaks Marybeth Ulrich’s first rule of the profession, “do no harm to the state’s democratic institutions.”⁸

This paper combines several disparate literatures to argue that military officers should not vote in federal elections – elections for congress and the president. First, the paper considers the Army profession literature, namely the role of the Army officer to develop expert knowledge, advise civilian decision makers on military affairs, and execute the civilian decision. Second, the paper addresses voting using the principal-agent framework and concomitant dilemmas, that is, the challenges arising because the principal (the boss) lacks the time and resources to closely monitor the activities of the agents (the subordinates). Third, the paper weaves together the political science literature explaining why individuals choose to vote with the Army Values. Finally, for the reader unmoved by the arguments outlined above, the paper offers the simplistic argument that military members do not choose their boss(es).

Role of the Military Officer

The literature on the military profession is quite unanimous on the role of the officer in politics, and the Hatch Act provides specific guidance on allowable and unallowable political activities. The literature agrees that military officers should be politically aware – they should understand how politics affects the military and broader policy – but the military should remain non-partisan and apolitical. General (Ret.) Barry McCaffery summarizes, “The senior military leadership must be objective, expert, and determinedly nonpartisan” and, “Senior uniformed leaders, however, must be viewed by the public and senior civilian leaders as politically neutral and blind to partisan consideration.”⁹ The nuance of these quotes is important – military officers must *be* nonpartisan but also must *be perceived* as nonpartisan. Richard Kohn explains similarly, “To function as the neutral servant of the state, the military must be seen not simply as nonpartisan but as “un-partisan:” above and beyond, and oblivious to partisan politics. Discussion of partisan politics erodes professionalism because it politicizes. Voting, if pursued, should be an intensely private matter.”¹⁰ As Urben’s data shows, officer voting behavior is neither un-partisan nor intensely private. The following will argue that abstaining from voting will help limit perceptions of partisanship and strengthen the civil-military relationship.

The literature is also rather unanimous on what officers *do*. Following in the tradition of Samuel Huntington, Don Snider suggests three responsibilities or functions of military leaders: representative, advisory, and executive. First, military leaders must *represent* military security by developing expert knowledge in the creation, maintenance, and use of the armed forces. Second, military leaders *advise* civilian leaders, without advocating for a policy decision, on the costs and benefits of employing the armed forces. Third, military leaders must implement, or *execute*, the decisions of civilian leaders regardless if the decision runs counter to the military’s advice or interests.¹¹ The following section will show how voting can create conflicts within the military’s responsibilities to *advise* and *execute*.

Adverse Selection and Moral Hazard

The principal-agent framework of the civil-military relationship, or what Peter Feaver espouses as the “Agency Theory,” is especially instructive with respect to officers voting.¹²

Economists use the principal-agent framework to describe the relationships between the employer (the principal) and the worker (the agent). The principal desires to hire diligent employees who do not spend their time doing other things (shirking). The potential employee wants to be hired and is therefore incentivized to appear more diligent than might be true. This presents the employer with an adverse selection problem – the employer cannot be certain a hiring decision is a good one. Once hired, the employee desires to work as little as possible while sending signals to the employer that the work is acceptable. Hence the employer is also faced with the moral hazard problem – the principal cannot sufficiently monitor the actions of the agent making it possible for the employee to act inappropriately if the employee and employer’s interests are not closely aligned. The existence of moral hazard allows the employee to shirk through laziness or outright disobedience.

The problems associated with the principal-agent framework exist in the civil-military arena, but are slightly more complicated (and potentially more grave) than the purely economic employer-employee relationship. In the civil-military context, the principals are federally elected leaders and their civilian appointees, while the agent is the military. “The civilian principal contracts with the military agent to develop the ability to use force in defense of the civilian’s interest. Once the contract is established, the civilian principal seeks to ensure that the military agent does what civilians want while minimizing the dangers associated with delegating power.”¹³ However, the preferences/interests of the civilian leaders and the military leaders may not align. Therefore, the military has both the incentive and the ability to shirk.¹⁴ That said, the differences of interests are less about ends – the security of the state – but more about ways and means – how best to provide that security.¹⁵

The idea of shirking is especially abhorrent to officers – the supposition that officers can be lazy or insubordinate contradicts officers’ professional self-identity. But, officers can, and likely do, shirk in other ways, especially within their professional requirement to provide military advice to civilian policy makers. When faced with civilian policy leanings contrary to the military’s preferences, officers can shirk by inflating the costs of military (in)action in an attempt to quash policy options. Officers can shirk by leaking information or advisory discussions to the press or other opinion leaders. Officers can shirk by “slow-rolling” a policy through bureaucratic morass. Officers can shirk through a public resignation in protest of policy. At the most extreme, but the most unlikely in the United States, officers can shirk by staging a coup.¹⁶

The responsibility to overcome the problems associated with civil-military relations certainly falls on both the civilian and military establishments. Officers’ voting abstention is one of many ways the military establishment can decrease civilian concerns of adverse selection, moral hazard, and shirking. An accepted professional norm that officers do not vote sends a loud signal to the civilian leadership that the military is truly nonpartisan and apolitical. Granted, voting abstention will not remove all concerns, but abstention can certainly help. Combined with the following analysis about why people do vote, it becomes

clear that officers abstaining is healthy for the civil-military relationship and hence, the republic.

Why Do People Vote? The Paradox of Voting

When people wonder why relatively few Americans vote, political scientists, especially those with a rational actor background, wonder why so many *do* vote. This section reviews the political science literature about American voter turnout and compares those findings with the “Army Values,” especially duty and selfless service. Political science informs that voting is actually a selfish, or consumptive to use the political science term, activity.

At its core, rational actor models posit that people do things when the benefits outweigh the costs. Applied to the decision to vote we have: VOTE if $pB > C$ where p is the probability that one’s vote decides the election, B is the benefit one receives from seeing his candidate win the election, and C represents the costs of voting. The p term is essentially zero in federal elections because the level of expected turnout combined with the American electoral system makes the probability of one single voter deciding the electoral outcome utterly improbable. The value of B also approaches zero because most government policies are collective goods, and the ability of one electoral victor to single-handedly deliver policy is small. Therefore, the equation becomes, VOTE if $0 > C$. Obviously there are costs to voting: informational costs of determining for whom to vote, time and financial costs with registering to vote, and the opportunity and financial costs of travelling to the election center or casting an absentee ballot. Although small, the costs are greater than zero. Hence the paradox of voting – if voting is all cost and no benefit, why do people actually vote? Political science offers some theories.¹⁷

Voting is a consumptive act, i.e., people “get something out of it” beyond determining the electoral outcome and subsequent policy benefit. The previous equation changes to:

VOTE if $pB + D > C$ where D can represent several things, among them, “civic Duty.” People vote because a feeling of civic obligation to uphold and advance democracy. The personal satisfaction one feels by doing one’s duty is certainly healthy for sustaining a democracy, but beyond the civic duties of military officers. Upon volunteering to join the military and upon the privilege of commissioning, an officer’s civic duty changes. Duty becomes service to the nation by defending the Constitution, which includes fealty to civilian leadership; officers’ civic duty becomes *represent-advise-execute*. Thus, officers’ voting in federal elections runs somewhat counter to the Army Values. The consumptive theories of voting conclude that voting is a selfish act divorced from a dutiful desire to advance democracy or even achieve policy outcomes. Rather, voting is a selfish act to feel better about oneself. Even if officers do vote based on a sense of civic duty, voting remains contrary to professional officers’ foremost duty – “do no harm to the state’s democratic institutions.” In light of the principal-agent framework of civil-military relations, voting can be harmful.

Another explanation for voter turnout is “minimax regret,” or taking action to minimize regret in a worst-case scenario. In terms of voting, this means voting for a candidate so that if the preferred candidate loses, the voter still has the satisfaction of “doing his part,”

thereby minimizing the regret of that candidate's loss. Conversely, the voter feels elation if his candidate wins for having helped in the victory.¹⁸ Again, however, this is a selfish reason for voting – the vote is not to advance democracy, but rather to satisfy personal emotions – thus, another understanding of the selfish “D” term. The group-based models of turnout best apply to the military. These models suggest that individuals do not vote for purely individual reasons, but rather to be part of a larger group. Groups can receive more benefits than individuals because collective goods policies most often implemented by government can advance the interests of the groups.¹⁹ The descriptive data presented earlier seems to support these models. Officers vote at higher levels than the general electorate; officers think it's important that other military members vote; officers encourage others to vote; and officers try (albeit to a small degree) to influence military voter preferences. These models and the data are especially troubling for the civil-military relationship.

Let us assume that 1) officers effectively increase military voter turnout, 2) the vote choice among the military is homogeneous, and 3) military voters are pooled in districts and states to such a large extent that they can influence the electoral outcome. As asked earlier, is such a scenario proper; is it proper for the military to determine a federal election? In terms of the principal-agent framework and the Army Values of selfless service and duty, it is not. If these assumptions hold, officers and the greater military are behaving like an interest group ostensibly to influence policy that affects the military.²⁰ In such a scenario the military increases the civilian leadership's concerns of adverse selection and moral hazard. Voting, therefore, can decrease trust between the military and its political leaders. Even if the assumptions do not hold, which is likely the case, a professional norm that voting is an officers' duty can still cause disquiet among the civilian leadership.

A common and understandable counter-argument to the above, primarily by junior officers, is, “I'm not in a position to advise civilian leaders; I will stop voting if and when I am.” Political science informs us otherwise. The “Learning” models of voting turnout posit that voting is backwards looking and habit-forming. Rather than voting by looking to future benefits, voters turnout based on past experiences. They relate their voting actions to outcomes; voting for the winner positively reinforces future turnout while voting for the losing candidate negatively reinforces future turnout.²¹

An Army colonel shared a story of his time on the Joint Staff during an election year. At a morning “stand-up” meeting during an election cycle, the general and flag officers said, paraphrasing, “I'm not voting in this election – not in my current position.” These sentiments imply these officers have voted in the past and will vote again in the future if holding a non-advisory position.

Maybe military officers can overcome the habit of voting in light of their positions, but maybe they cannot. Regardless, as stated earlier, officers who can say, “I have never voted,” send a strong signal to the civilian leadership that the profession is non-partisan and apolitical. “I have never voted” is a much stronger signal than, “I'm not voting in *this* election.”

Choosing the Bosses

Finally, the military does not pick its bosses. When American civilians vote they are the principals choosing agents (elected officials) to represent their interests in government. In contrast, when officers vote they are choosing their principals for whom those very officers will become the agents. Such an arrangement runs counter to the civil-military relationship. While it is arguable that the military works for the American people, i.e., the military are agents for the people as principals, in the American political system the military works for the people *through* the elected officials.

Conclusion

This paper analyzed officers' decision to vote based upon 1) officers' role to build expert knowledge, provide military advice to civilian leaders, and execute the civilian policy decision; 2) the principal-agent framework; 3) the political science literature on why individuals do vote; and 4) the power relationships among the citizenry, the military, and elected officials. The purpose of this paper is to generate professional discussion among the profession. Therefore, it intentionally does not address the many counter-arguments to abstaining from voting. Furthermore, it does not discuss the propriety of voting of the entire military, nor the propriety of absentee voting, nor the propriety of voting by members of the Reserves and National Guard, nor the propriety of voting in sub-national elections. Professional discussion and debate about these permutations is certainly warranted. Officers voting federal elections might be acceptable. Officers' voting without first considering the profession and the affect on the civil-military relationship is unacceptable.

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Chapter 20

The Two-Mirror Model: A Concept for Interpreting the Effects of Moral Injury

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Your soul is like a shadow. Sometimes it wanders off like a butterfly, and that is when you're sad and that's when you get sick.

- Hmong Folk Proverb¹

As a platoon leader, I feel responsible for everything my platoon does or fails to do. I failed to keep Jesse Dietrich safe, and you know, it was just tough. I keep thinking of other ways I would have done it, but it was a very tough mission and the enemy beat us that day. It was just a really bad night.

- Captain Alejandro Villanueva, Army Ranger²

Purpose – Defining the Heart and Soul Of Moral Injury

This paper is the summary of a longer thesis written to develop a conceptual model for military leaders, educators, and health professionals to interpret the injurious effects of moral injury (MI) and to guide their efforts in helping Soldiers to serve and live with honor. The two-mirror model (TMM) provides a concept to deconstruct the injurious processes that create moral injury, to reconstruct new meaning that enables Soldiers to reconnect with the values and people that ultimately matter. Foundationally, the model depends upon understanding the moral reasoning processes where moral development, moral judgment and moral reconciliation interact within the military. This paper will intentionally use the word Soldier to include all members of the military and to distinguish professional expectations from the combat function of warrior. Lieutenant Colonel Peter Fromm summarizes this distinction, “The Army (military) is full of great Soldiers, not literal warriors, and their mission is to protect, not to destroy.”³

Defining Moral Injury (MI)

Moral Injury is the complex effects from moral reasoning processes that gnaw at the heart, and darken the soul of combat veterans. This paper combines elements from four recognized definitions into this working definition. Moral injury as a complex “soul” wound that results from Soldiers’ conscientious inability to reconcile the moral dissonance between their idealized values and their perceived experiences. This wound produces a continuum of exiling behaviors that damage Soldiers’ ability to reconnect with their lives.⁴

MI begins in the moral development of responsible agency. In the profession of arms, responsible agency entwines personal character and professional ethos to empower those who conscientiously accept military service to serve honorably under difficult conditions and to return home successfully. In combat, responsible agency doesn’t guarantee acceptable actions. Reasoned choices and planned actions fail; character and ethos fragment, and moral injuries occur as participants live with the consequences.

MI grows out of a moral reasoning conscience, trying to reconcile the dissonance between “idealized” standards against perceptions of “real” behaviors and events during combat. The idealized standards, perceived behaviors, and the resulting dissonance reflect the outcomes of moral development, moral judgment and moral reconciliation processes occurring within a Soldier’s conscience. The severity of the dissonance becomes the mechanism of MI that affects veterans throughout the remainder of their lives. The dissonance may be as mild the effects of cloudy skies during a planned outing, as unnerving as a thunderstorm when caught out in the open, or as devastating as a tornado tearing through a living room. Irreconcilable dissonance from combat experiences determines the severity of the moral injury.

Moral Injury (MI) and Post Traumatic Stress Disorder (PTSD)

PTSD is a trauma-related injury diagnosed from Soldier reactions to combat stressors. Moral injury is based upon Soldiers’ processing what *they* experience. Because of this, MI may not manifest itself in the same cause-effect post-trauma behaviors as PTSD.⁶ Psychiatrist Jonathan Shay found that some Soldiers’ perceptions about their combat experiences led to their post-trauma symptoms, *not their direct exposure to violent traumatic events*.⁷ Moral injuries occur less from fear and more from loss, specifically violent, traumatic loss. Loss is a very important and [a] separate, potential harm for service members in war.”⁸

The Two-Mirror Model (TMM) of Moral Injury

The TMM is composed of three interactive components describing the relationship between the values, perceptions, and dissonance that form the mechanism of injury for MI. The first two components of the TMM are based upon a two-mirror clinical model used by Dr. Keith Olson to describe the comparative process people use to reconcile their self-identity. The first mirror reflects the “ideal or desired self,” that is formed from habituated values and desires that shape an expectation for life, as it “should be.” People use this mirror as a standard to compare to the image they see in the second mirror. The second mirror reflects the “perceived self” derived from the external and internal feedback people use to judge their thoughts and actions. Perception is reality, and the differences between the “ideal” and the “perceived” images form a gap characterized by a dissonance that becomes the third, and most important component of the TMM.

The gap works this way. The closer the reflected images between the “ideal” and the “perceived” coincide, the greater the accord people experience. The further apart these two mirror images become, the greater the amount of dissonance. This dissonance can be a change agent for personal growth or this dissonance can be a disruptive storm for self-destruction.¹⁰ When this model is applied to the profession of arms, the two mirrors reflect images of an idealized and perceived character that are the outcome of a moral development process that is inherent within the profession of arms, and a moral judgment process that is at work within the military. The differences between the two images create a gap of moral dissonance that individuals try to reconcile. This reconciliation process becomes the mechanism of moral injury.

Moral dissonance is a highly nuanced, contextual conflict that results from Soldiers attempting to reconcile the specific elements of moral dilemmas.¹¹ It is necessary to holistically conceptualize and examine these elements in terms of the complex processes they embody and the complex effects they engender. The TMM is designed to explain how Soldiers continual “replaying” their attempts to reconcile conflicting ideals with perceptions generates a continuum of moral dissonance that disrupts their lives. This disruption affects both their identity and their behavior. Author David Wood states that moral injury is, “a new concept to describe what many (veterans) feel: a sense that their fundamental understanding of right and wrong has been violated and the grief, numbness or guilt that often ensues.”¹² Moral injury is not new, and the following sections will describe the moral reasoning processes within the profession of arms that inherently contribute to the formation MI.

The Ideal Mirror – The Moral Development of Professional Soldiers

The ideal mirror reflects an aggregate image of desired values formed from the content and structure of moral development processes. The United States Military is a moral construction because it is value-centric in determining the standards and practices governing its ethos. These standards and practices carry the moral weight of growing deep roots unifying the individual and social identities of its Soldiers that define “good/right versus bad/wrong.” This is true in times of peace, but more significant in times of war when the use of force for killing in combat become the critical practices for defining Soldiers’ identity.

Civilians do not enter the military as a blank slate. They come with a “pre-wired” conscience operating with personal values. As civilians enter military service their personal foundational senses of care, fairness, liberty, loyalty, authority, and sanctity become entwined with professional senses of fidelity, responsibility, accountability, maturity, and efficacy (FRAME).¹³ FRAME consists of five interactive professional senses defining the moral development of all military values, including trust and the five essential characteristics of professional character.¹⁴ Specifically, these professional senses are; fidelity (buy in), responsibility (ownership for determining behavior), accountability (culpability for results), maturity (experience and competence), and efficacy (empowerment and capability).

The ideal standards for military service are the result of moral choices practiced by Soldiers making professional ethical decisions. It is important to examine the content as well as the education processes the military uses to achieve its standards. The development of *how* Soldiers reason depends upon the education and training of *what* they do and *why* they do it. In the military, “Training is transferring skills and abilities, education is transferring knowledge, and development is creating lasting changes in one’s identity, perspectives, and meaning.”¹⁵

The critical question is whether Soldiers develop the capability to morally reason along with as a professional competency. The ideal mirror unites ethical decision-making with moral reasoning thru traditional classroom and experiential range instruction using the moral developmental theory of Jonathan Haidt, the operant conditioning theories of David Grossman, and the tactical ethics theory of Dick Couch. Currently, ethical decision-making is a desired learner attribute for professional military education, but moral reasoning is not.¹⁶ Ethical decision making in the military depends upon legal and moral elements used

by the profession and individual Soldiers.¹⁷ It also depends upon Soldiers capability to interpret conflicting ethical systems of principle, utility, situation, and virtue into operational systems governed by rules/orders, command intent, situation awareness/flexibility, and character.¹⁸ Soldiers will morally reason using all their values, regardless of whether the military develops their reasoning capability. A disconnect within the education and training systems can lead to an arrested moral development of Soldiers.

The intent of the profession of arms is to develop what Michael Walzer describes as the necessity for “fighting well in a just war.”¹⁹ “Fighting well,” may not be good enough, because, “Veterans who suffer from MI are struggling to recover their lost sense of humanity.”²⁰ A Soldier’s troubled conscience reflects their ultimate values as well as their professional values. FRAME helps interpret an ideal standard operating under conflicting ethical systems of principles, utility, situations, and virtues. The difference between a Soldier, a functioning warrior, and a pirate (who possess the military skills without the values) depends upon their level of moral development. Civilians can be trained to function as warriors, but in the absence of disciplined standards they may act either as lethal pirates or as professional Soldiers, or as a combination of all three. Ask yourself, “What ideal standard Soldiers using?

The Perceived Mirror – The Moral Judgment of Combat Experience

What makes a warrior a warrior is taking personal responsibility, and when they fail to live up to that enormously high ideal, that’s moral injury.²¹

The Perceived mirror reflects Soldiers’ moral judgments. Moral judgment is the professional conscience at work. These judgments are a report card reflecting Soldiers’ grades comparing their “ideal” standards of what “should” happen in relation to their perceptions about what “did” happen. Therefore, questions of *what* Soldiers think are intricately connected to questions of *why* they think it, and *how* they reason.

The simple assumption is that ideal Soldier behaviors shaped by professional values leads to favorable perceptions. However, the data reveals that Soldiers, warriors, and pirates operate using complex-blends of values, desires, and group authority to determine and judge their behavior. Soldiers blend their personal values with their professional values and competence. They may perceive their participation as correct/wrong, or good/evil. When a soldier is functioning as a warrior, these blended values form a continuum of possible behaviors in combat.

Couch refers to this continuum as the “dial.” The perceived mirror reflects the dial that Soldiers use in combat and the moral “after-action” report card they give themselves, their unit, and their nation. These judgments happen around events Soldiers associate themselves, acts they commit, and acts they failed to prevent (omission). Psychiatrist Edward Tick prefers to use the Civil War term “Soldiers’ Heart” to describe this injury, because it accurately describes the outcome from impossible situations that, “disorder of a good warrior.”²²

These judgments are often a tangled blend of virtue, principle, utility, and situation resulting from Soldiers’ ethical decision-making and moral reasoning. They may also reflect

decisions by others. Soldiers are trained to be the “good guys,” and loss of this ideal can result in feelings of anger, betrayal and guilt. A majority of Soldiers don’t dishonor their profession or their country, and their anger, betrayal, guilt, and hurt reflects the gap between what they ultimately value and what they attempted to accomplish in impossible situations. The key issue is not hypocrisy, failure, the chaos of combat or their vocational choice but how Soldiers deal with the moral dissonance between their ultimate sense of value and their perceptions. FRAME provides a method for interpreting Soldiers’ moral dissonance.

Moral Dissonance – Surviving the Storm

“Modern warfare promises transformation, but it fails to deliver.”²³ Soldiers ask, “Did I live up to my ideal?” A negative answer is what injures them. Moral dissonance is the process Soldiers use to reconcile conflicting images. In manageable amounts, dissonance is the sign of a healthy conscience at work. However, it can also be a growing storm cloud representing an increasing burden of effects. Dissonance is complex, and highly influenced by the individual development and judgments of Soldiers, as individuals, as a unit, and as national stewards. When the distance between the ideal and the perceived is small, the effect is light and the storm cloud resembles a cloudy sky. As the distance increases, the effects grow and the storm cloud resembles a thunderstorm or a cyclone. Moral dissonance can result in a moral irritant, a moral hurt, or a moral injury.

The professional senses of FRAME (fidelity, responsibility, accountability, maturity, and efficacy) are helpful for interpreting the effects of dissonance upon Soldiers’ lives and for creating a path for moral reconciliation. Specifically, they can be used to deconstruct and reconstruct Soldiers’ personal narratives. MI is more than normal reactions to abnormal conditions. MI is a violation of what ultimately matters, and about living with the resulting “shades of gray.” War attacks morality and the effects from combat stress are both cumulative and comprehensive. They are cumulative because they build upon one another. They are comprehensive because they permeate Soldiers’ existence. MI is linked with the levels of hurt caused, received, or associated with combat.

In combat when the ideal standard disappears and ethical reasoning is put on hold, then only the perceived present is left to determine action. Moral injury is a testimony to the destructive power of the perceived present in combat. This dynamic is just as much a matter of ethical leadership and training as it is about medical care.

MI is a moral inversion that is immune to medication, stress reduction, and value-neutral therapies.²⁴ When these conditions are diagnosed and treated as adjustment problems, veterans do not “get better,” because the center of gravity is not a chemical imbalance, but a violation of the value systems they use to navigate through life. Here, guilt, shame, anger, and betrayal become “weights” that shift the balance of life itself. The consequences of moral judgments made during war shape behavior and shatter individual and corporate belief systems to the point where Soldiers’ rage is directed both inward and outward. Human beings are also governed by moral force. The great cost of underestimating these forces in the information age is surely too great to go long unnoticed and inadequately addressed.²⁵

Conclusion

What a returning Soldier needs most when leaving war is not a mental health professional but a living community to whom his experience matters. If both mental health professionals and chaplains made authentic communalization of Soldiers' grief their goal, they would do more good than the best individual counseling. And such advice on communalization will be welcomed by commanders in wartime only if prior training and role modeling have prepared them to be receptive.²⁶

The hope of this study is that the TMM model will alter the way the military interprets the moral effects of combat, and change the way it develops, leads, and heals Soldiers within the profession of arms. Perhaps a more reasonable objective is that the TMM will provide a way that Soldiers, educators, leaders, and counselors can deconstruct combat experiences and facilitate the reconstruction of a healed identity.

Resiliency in the military can be defined as the capability to "bounce back" from external stresses, or more accurately, resiliency should be defined as the virtue to overcome trauma by integrating a wounding experience into a new a new path forward.²⁷ This path will require an intentional integration of all the professional and human dimension elements necessary for defining and practicing our sense of "ultimate values." This includes a holistic body, mind, and spirit approach to training and educating moral reasoning within the military.

The problem with moral injury is not that military standards are too high and reality of combat so low, but that human beings assumed the profession of Soldier and must live in the continuum between peace and war by connecting ultimate values with practice. This is not a matter of hypocrisy; it is a matter of living simultaneously between principles, utility, situation, and virtue. For Soldiers this means developing a moral conscience. The two-mirror model (TMM) provides an intentional way for military leaders, educators and healers to interpret what happens to moral conscience in in combat, and provides the means for Soldiers' to conscientiously accept and deal with the complexities of service as members in the profession of arms.

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